

EXHIBIT 291

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5 IN RE: NATIONAL : MDL NO. 2804
6 PRESCRIPTION OPIATE :
7 LITIGATION :

8 : CASE NO.
9 THIS DOCUMENT : 1:17-MD-2804
10 RELATES TO ALL CASES:

 : Hon. Dan A.
 : Polster

11 - - -

 Friday, August 3, 2018

12 - - -

13 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
14 CONFIDENTIALITY REVIEW

15 - - -

16 Videotaped deposition of
17 CHRISTOPHER ZIMMERMAN, taken pursuant to
18 notice, was held at the law offices of
19 Reed Smith, LLP, Three Logan Square, 1717
20 Arch Street, Suite 3100, Philadelphia,
21 Pennsylvania 19103, beginning at 9:00
22 a.m., on the above date, before Amanda
23 Dee Maslynsky-Miller, a Certified
24 Realtime Reporter.

 - - -

20

21

22

 GOLKOW LITIGATION SERVICES
23 877.370.3377 ph| 917.591.5672 fax
 deps@golkow.com

24

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 BARON & BUDD P.C.</p> <p>4 BY: MARK PIFKO, ESQUIRE</p> <p>5 BY: STERLING CLUFF, ESQUIRE</p> <p>6 15910 Ventura Boulevard</p> <p>7 #1600</p> <p>8 Encino, California 91436</p> <p>9 (818) 839-2333</p> <p>10 mpifko@baronbudd.com</p> <p>11 Scluff@baronbudd.com</p> <p>12 - and -</p> <p>13 BY: SCOTT SIMMER, ESQUIRE</p> <p>14 Washington, DC</p> <p>15 (202) 333-4562</p> <p>16 Ssimmer@baronbudd.com</p> <p>17 Representing the Plaintiffs</p> <p>18</p> <p>19 REED SMITH, LLP</p> <p>20 BY: ROBERT A. NICHOLAS, ESQUIRE</p> <p>21 BY: JOSEPHY J. MAHADY, ESQUIRE</p> <p>22 BY: JEFFREY R. MELTON, ESQUIRE</p> <p>23 BY: SHANNON E. MCCLURE, ESQUIRE</p> <p>24 BY: THOMAS H. SUDDATH JR., ESQUIRE</p> <p>Three Logan Square</p> <p>1717 Arch Street</p> <p>Philadelphia, PA 19103</p> <p>(215) 851-8100</p> <p>Rnicholas@reedsmith.com</p> <p>jmahady@reedsmith.com</p> <p>Jmelton@reedsmith.com</p> <p>Smcclure@reedsmith.com</p> <p>Tsuddath@reedsmith.com</p> <p>Representing the Defendant,</p> <p>Amerisource Bergen Drug</p> <p>Corporation</p>	<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 PELINI CAMPBELL & WILLIAMS, LLC</p> <p>4 BY: ERIC J. WILLIAMS, ESQUIRE</p> <p>5 8040 Cleveland Avenue NW</p> <p>6 Suite 400</p> <p>7 North Canton, OH 44720</p> <p>8 330.305.6400</p> <p>9 ejwilliams@pelini-law.com</p> <p>10 Representing the Defendant,</p> <p>11 Prescription Supply, Inc.</p> <p>12</p> <p>13 WILLIAMS & CONNOLLY, LLP</p> <p>14 BY: MATTHEW C. MONAHAN, ESQUIRE</p> <p>15 725 Twelfth Street, N.W.</p> <p>16 Washington, DC 20005</p> <p>17 202.434.5000</p> <p>18 mmonahan@wc.com</p> <p>19 Representing the Defendant,</p> <p>20 Cardinal Health</p> <p>21</p> <p>22 ARNOLD & PORTER KAYE SCHOLER LLP</p> <p>23 BY: SAMUEL LONERGAN, ESQUIRE</p> <p>24 250 West 55th Street</p> <p>New York, New York 10019</p> <p>(212) 836-8000</p> <p>samuel.lonerган@arnoldporter.com</p> <p>Representing the Defendant,</p> <p>Endo Pharmaceuticals</p> <p>BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP</p> <p>BY: KATHERINE M. SWIFT, ESQUIRE</p> <p>Courthouse Place</p> <p>54 West Hubbard Street, Suite 300</p> <p>Chicago, Illinois 60654</p> <p>(312) 494-4400</p> <p>kate.swift@bartlit-beck.com</p> <p>Representing the Defendant,</p> <p>The Walgreens Company</p>
Page 3	Page 5
<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 COVINGTON & BURLING LLP</p> <p>4 BY: EMILY KVESELIS, ESQUIRE</p> <p>5 850 Tenth Street, NW</p> <p>6 Suite 856N</p> <p>7 Washington, DC 20001</p> <p>8 202.662.5000</p> <p>9 ekveselis@cov.com</p> <p>10 Representing the Defendant,</p> <p>11 McKesson Corporation</p> <p>12</p> <p>13 MARCUS & SHAPIRA LLP</p> <p>14 BY: JAMES F. ROSENBERG, ESQUIRE</p> <p>15 One Oxford Centre</p> <p>16 35th Floor</p> <p>17 Pittsburgh, PA 15219</p> <p>18 412.338.4683</p> <p>19 rosenberg@marcus-shapira</p> <p>20 Representing the Defendant,</p> <p>21 HBC Service Company</p> <p>22</p> <p>23 JONES DAY</p> <p>24 BY: SARAH G. CONWAY, ESQUIRE</p> <p>555 South Flower Street</p> <p>Los Angeles, California 90071</p> <p>(213) 489-3939</p> <p>sgconway@jonesday.com</p> <p>Representing the Defendant,</p> <p>Walmart</p>	<p>1 VIA TELECONFERENCE:</p> <p>2</p> <p>3 LOCKE LORD LLP</p> <p>4 BY: BRANDAN MONTMINY, ESQUIRE</p> <p>5 2200 Ross Avenue</p> <p>6 Suite 2800</p> <p>7 Dallas, Texas 75201</p> <p>8 (214) 740-8000</p> <p>9 brandan.montminy@lockelord.com</p> <p>10 Representing the Defendant,</p> <p>11 Henry Schein Medical Systems, Inc.</p> <p>12</p> <p>13 ROPES & GRAY LLP</p> <p>14 BY: JESSICA F. SORICELLI, ESQUIRE</p> <p>15 BY: FEIFEI (ANDREA) REN, ESQUIRE</p> <p>16 1211 Avenue of the Americas</p> <p>17 New York, New York 10036</p> <p>18 (212) 596-9000</p> <p>19 Jessica.Soricelli@ropesgray.com</p> <p>20 Andrea.Ren@ropesgray.com</p> <p>21 Representing the Defendant,</p> <p>22 Mallinckrodt</p> <p>23</p> <p>24 MORGAN LEWIS & BOCKIUS, LLP</p> <p>BY: ELLIOT E. BROWN, ESQUIRE</p> <p>1111 Pennsylvania Ave. NW</p> <p>Washington, D.C. 20004</p> <p>(202) 739-3000</p> <p>elliott.brown@morganlewis.com</p> <p>Representing the Defendants,</p> <p>Teva Pharmaceuticals, Inc.,</p> <p>Cephalon, Inc., Watson</p> <p>Laboratories, Actavis LLC, and</p> <p>Actavis Pharma, Inc.</p>

1 APPEARANCES: (Continued)
2 Via Teleconference:
3
4 JACKSON KELLY PLLC
5 BY: SAMANTHA M. D'ANNA, ESQUIRE
6 500 Lee Street East
7 Suite 1600
8 Charleston, WV 25301
9 (304) 340-1347
10 samantha.danna@jacksonkelly.com
11 Representing the Defendant,
12 Miami-Luken, Inc.
13
14
15
16
17 ZUCKERMAN SPAEDER LLP
18 BY: VANESSA I. GARCIA, ESQUIRE
19 485 Madison Avenue
20 10th Floor
21 New York, New York 10022
22 (212) 704-9600
23 vgarcia@zuckerman.com
24 Representing the Defendant,
25 CVS Pharmacy
26
27
28
29 ALSO PRESENT:
30 David Lane, Videographer
31 Zac Hone - Trial Technician

1 INDEX

2

3

4 Testimony of: CHRISTOPHER ZIMMERMAN

5 By Mr. Pifko 11

6

7 EXHIBITS

8

9 NO.	DESCRIPTION	PAGE
10 Amerisource Bergen - Zimmerman Exhibit-1	Notice of Deposition	13
11 Amerisource Bergen - Zimmerman Exhibit-2	*Skipped*	
12		
13 Amerisource Bergen - Zimmerman Exhibit-3	Notice of 30(b)(6) Deposition	19
14		
15 Amerisource Bergen - Zimmerman Exhibit-4	2001 Chemical Handler's Notebook	131
16		
17 Amerisource Bergen - Zimmerman Exhibit-5	ABDCMDL 00279854-65	137
18 Amerisource Bergen - Zimmerman Exhibit-6	ABDCMDL 00269683-694	145
19		
20 Amerisource Bergen - Zimmerman Exhibit-7	ABDCMDL 00000101-122	170
21 Amerisource Bergen - Zimmerman Exhibit-8	ABDCMDL 00270533	248
22		
23 Amerisource Bergen - Zimmerman Exhibit-9	ABDCMDL 00273425	251
24		

<p style="text-align: right;">Page 10</p> <p>1 - - -</p> <p>2 (It is hereby stipulated and</p> <p>3 agreed by and among counsel that</p> <p>4 sealing, filing and certification</p> <p>5 are waived; and that all</p> <p>6 objections, except as to the form</p> <p>7 of the question, will be reserved</p> <p>8 until the time of trial.)</p> <p>9 - - -</p> <p>10 VIDEO TECHNICIAN: We are</p> <p>11 now on the record. My name is</p> <p>12 David Lane, videographer for</p> <p>13 Golkow Litigation Services.</p> <p>14 Today's date is August 3rd, 2018.</p> <p>15 Our time is 9:23 a.m.</p> <p>16 This deposition is taking</p> <p>17 place in Philadelphia,</p> <p>18 Pennsylvania, in the matter of</p> <p>19 National Prescription Opiate</p> <p>20 Litigation. Our deponent today is</p> <p>21 Chris Zimmerman. Our counsel will</p> <p>22 be noted on the stenographic</p> <p>23 record.</p> <p>24 The court reporter is Amanda</p>	<p style="text-align: right;">Page 12</p> <p>1 your testimony here is under penalty of</p> <p>2 perjury?</p> <p>3 A. Yes.</p> <p>4 Q. And that means that if you</p> <p>5 are untruthful or dishonest in any way</p> <p>6 you could be subject to penalties from</p> <p>7 the court.</p> <p>8 Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you intend to provide</p> <p>11 cooperative testimony today?</p> <p>12 A. I do.</p> <p>13 Q. From time to time,</p> <p>14 Amerisource's counsel might assert</p> <p>15 objections. Unless he instructs you not</p> <p>16 to answer, I'm still entitled to an</p> <p>17 answer.</p> <p>18 Do you understand that?</p> <p>19 A. Yes.</p> <p>20 Q. We can take breaks -- I'm</p> <p>21 sure that you went over all this in the</p> <p>22 prep session with your lawyers. We can</p> <p>23 take breaks. The only thing is unless</p> <p>24 your counsel is going to be conferring</p>
<p style="text-align: right;">Page 11</p> <p>1 Miller and will now swear in the</p> <p>2 witness.</p> <p>3 - - -</p> <p>4 CHRISTOPHER ZIMMERMAN, after</p> <p>5 having been duly sworn, was</p> <p>6 examined and testified as follows:</p> <p>7 - - -</p> <p>8 VIDEO TECHNICIAN: Please</p> <p>9 begin.</p> <p>10 - - -</p> <p>11 EXAMINATION</p> <p>12 - - -</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Good morning, Mr. Zimmerman.</p> <p>15 My name is Mark Pifko, I'm counsel for</p> <p>16 plaintiffs in this matter. Just met a</p> <p>17 few moments ago for the first time, off</p> <p>18 the record.</p> <p>19 You understand that you are</p> <p>20 here as the company's designated witness</p> <p>21 for certain topics?</p> <p>22 A. Correct.</p> <p>23 Q. The court reporter just</p> <p>24 swore you in. So you understand that</p>	<p style="text-align: right;">Page 13</p> <p>1 with you about a privilege, we can't take</p> <p>2 a break while a question is pending.</p> <p>3 Do you agree to that?</p> <p>4 A. Yes.</p> <p>5 MR. PIFKO: Let's start by</p> <p>6 handing him the 30(b)(6) notice</p> <p>7 for Number 1.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. While he's getting that, are</p> <p>10 you under any medications or undergoing</p> <p>11 any treatment of any kind that would</p> <p>12 inhibit your ability to provide truthful</p> <p>13 and accurate testimony today?</p> <p>14 A. No.</p> <p>15 Q. Is there any reason that you</p> <p>16 can state why your deposition should not</p> <p>17 go forward today?</p> <p>18 A. No.</p> <p>19 - - -</p> <p>20 (Whereupon, Amerisource</p> <p>21 Bergen-Zimmerman Exhibit-1, Notice</p> <p>22 of Deposition, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p>

Page 14

1 BY MR. PIFKO:
2 Q. I've just handed you what's
3 marked as Exhibit-1, which is a first
4 notice of deposition under Rule 30(b)(6).
5 It's got some topics on
6 here, there are page numbers under there.
7 The topics start on the bottom of the
8 page, Page 6.
9 Do you see that?
10 A. Yes.
11 Q. Have you seen this document
12 before?
13 A. I don't believe so.
14 Q. Have you seen these topics
15 before?
16 A. Let me take a quick look at
17 them.
18 Q. Sorry?
19 A. I'm reading through these
20 real quickly.
21 Q. Just for housekeeping, we
22 didn't go over that, but there are,
23 again, I'm sure your counsel told you
24 some of these things in preparing for the

Page 15

1 depo, but there's a couple of ground
2 rules that we have to remember because
3 we're on the record here. Try to
4 annunciate clearly if you're providing an
5 answer, give an audible response and
6 don't say words like uh-huh and uh-uh
7 because when you read it on the
8 transcript, you can't tell if it's a yes
9 or no.
10 Understood?
11 A. Yes.
12 Q. So you're reviewing the
13 document right now?
14 A. Yes.
15 Q. To be clear, my question was
16 if you had seen these topics before,
17 which start on Page 6, and they're
18 lettered A through O.
19 A. Yes.
20 Q. You have seen these topics
21 before?
22 A. I have.
23 Q. Okay. When was the first
24 time you saw these?

Page 16

1 A. A couple of weeks ago,
2 maybe.
3 Q. And are you prepared to
4 provide testimony on behalf of the
5 company with respect to these topics?
6 A. Within a certain time frame,
7 yes.
8 Q. I understand the time frame
9 goes from -- up until the end of 2014; is
10 that correct?
11 A. Correct.
12 MR. NICHOLAS: Just for the
13 record, just one of these topics,
14 Topic O, is one which I believe
15 there's an agreement among counsel
16 that we will respond to in writing
17 as opposed to in testimony here
18 today.
19 MR. PIFKO: Well, we can
20 meet and confer, but I don't
21 intend to take testimony on that
22 topic today in any event.
23 MR. NICHOLAS: Well, just to
24 be clear, though, I think there's

Page 17

1 an agreement that we're responding
2 to this in writing.
3 MR. PIFKO: I'm not aware of
4 such an agreement. I'm not
5 disputing -- or I'm not taking a
6 position.
7 MR. NICHOLAS: Okay.
8 MR. PIFKO: But we can be
9 clear that that's not part of the
10 deposition today, however we end
11 up handling it.
12 MR. NICHOLAS: Okay.
13 BY MR. PIFKO:
14 Q. And so you understand that
15 you're also being deposed here in your
16 individual capacity as well.
17 Do you understand that?
18 A. Yes.
19 Q. For the most part, you can
20 imagine, the company is made up of many
21 individuals, and so it's hard to have
22 someone speak for the company.
23 So what we do in these
24 situations is we have these topics and

<p style="text-align: right;">Page 18</p> <p>1 you, right now sitting in that chair for 2 the purpose of this case, are 3 AmerisourceBergen with respect to these 4 topics. 5 Do you understand that? 6 MR. NICHOLAS: Object to the 7 form. 8 You can answer. 9 THE WITNESS: Yes, I'm going 10 to be speaking on these topics. 11 BY MR. PIFKO: 12 Q. And from time to time, I 13 might be asking, does AmerisourceBergen 14 do this or that? And you'll be 15 answering, you know, so long as it's 16 within the scope of these topics, you'll 17 be answering on behalf of the company. 18 Do you understand that? 19 MR. NICHOLAS: Same 20 objection. 21 But go ahead. 22 THE WITNESS: Yes, I'll be 23 answering questions. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 20</p> <p>1 for identification.) 2 - - - 3 BY MR. PIFKO: 4 Q. It's marked as Exhibit-3, 5 which is the notice that calls us here 6 today. 7 And it also, in addition to 8 calling for your 30(b)(6) testimony, it 9 calls for your individual testimony as 10 well. 11 A. Okay. 12 Q. Are you familiar with The 13 Controlled Substances Act? 14 A. Yes. 15 Q. How long have you been 16 working at AmerisourceBergen? 17 A. Since January 1990. 18 Q. And you are currently senior 19 vice president, chief compliance officer? 20 A. Correct. 21 Q. And you're also senior vice 22 president in charge of the -- what's your 23 exact title for the aspect of the company 24 that deals with compliance with the CSA?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And you understand that 2 you'll be answering them on behalf of the 3 company? That's what I'm trying to get 4 at. 5 MR. NICHOLAS: Same 6 objection. 7 You can answer. 8 THE WITNESS: It depends on 9 whether it's as I'm representing 10 the company. You also indicated 11 I'll be answering questions for 12 myself. 13 BY MR. PIFKO: 14 Q. But with respect to these 15 topics, you understand that for the date 16 range we discussed, you'll be answering 17 on behalf of the company? 18 A. Yes. 19 Q. Okay. And then I just 20 handed you what's marked as Exhibit-2. 21 - - - 22 (Whereupon, Amerisource 23 Bergen-Zimmerman Exhibit-3, Notice 24 of 30(b)(6) Deposition, was marked</p>	<p style="text-align: right;">Page 21</p> <p>1 A. So I'm senior vice president 2 of corporate security and regulatory 3 affairs. 4 Q. And you guys called that 5 CSRA within your company? 6 A. That's the abbreviation, 7 yes. 8 Q. So if I use the term "CSRA," 9 you understand what that means? 10 A. Yes. 11 Q. AmerisourceBergen is a 12 registrant under The Controlled 13 Substances Act, correct? 14 A. We are a DEA registrant, 15 correct. 16 Q. Have you ever heard the 17 term, I think -- I'm from California, we 18 drive a lot there, there's a phrase they 19 use that says, driving is a privilege, 20 not a right. 21 Have you ever heard that 22 kind of a phrase before? 23 A. Not really. 24 Q. AmerisourceBergen sells</p>

<p style="text-align: right;">Page 22</p> <p>1 drugs, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Included among those drugs</p> <p>4 are controlled substances, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And it's AmerisourceBergen's</p> <p>7 position as a registrant that allows the</p> <p>8 company to sell controlled substances,</p> <p>9 correct?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: We have a</p> <p>13 controlled substance registration</p> <p>14 that allows us to distribute.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. And absent that</p> <p>17 registration, it's not legal for</p> <p>18 AmerisourceBergen to sell controlled</p> <p>19 substances, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So do you understand that</p> <p>22 along with the privilege and the right</p> <p>23 to -- the ability to sell controlled</p> <p>24 substances, certain duties are attached</p>	<p style="text-align: right;">Page 24</p> <p>1 THE WITNESS: Can you say</p> <p>2 your question one more time?</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. The ability to sell</p> <p>5 controlled substances also comes with</p> <p>6 certain obligations that you must follow,</p> <p>7 correct?</p> <p>8 MR. NICHOLAS: Same</p> <p>9 objection.</p> <p>10 THE WITNESS: It's the</p> <p>11 obligations of the requirements of</p> <p>12 the Code of Federal Regulations.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. And specifically, that's The</p> <p>15 Controlled Substances Act, correct?</p> <p>16 A. The regulations from the</p> <p>17 act, correct.</p> <p>18 Q. So The Controlled Substances</p> <p>19 Act and the regulations that follow,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what a duty to</p> <p>23 maintain effective controls is?</p> <p>24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 23</p> <p>1 to that as well.</p> <p>2 Do you understand that?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: I'm not sure</p> <p>6 what you're referring to as</p> <p>7 "duties."</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. Okay. You understand there</p> <p>10 are restrictions on what you can do as an</p> <p>11 entity selling controlled substances,</p> <p>12 correct?</p> <p>13 A. There's requirements that we</p> <p>14 follow. I don't know if I'd refer to</p> <p>15 them as restrictions, but there's</p> <p>16 regulatory requirements that we have to</p> <p>17 adhere to.</p> <p>18 Q. Right. So my question is,</p> <p>19 the ability to sell controlled substances</p> <p>20 also comes with certain obligations,</p> <p>21 correct?</p> <p>22 MR. NICHOLAS: Object to the</p> <p>23 form.</p> <p>24 Go ahead.</p>	<p style="text-align: right;">Page 25</p> <p>1 form.</p> <p>2 THE WITNESS: I'm not sure</p> <p>3 what your question is. We -- I'm</p> <p>4 not sure what your question is.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. Have you heard the phrase,</p> <p>7 "duty to maintain effective controls"?</p> <p>8 A. No.</p> <p>9 Q. You've never heard that term</p> <p>10 before?</p> <p>11 A. No.</p> <p>12 Q. Do you have an understanding</p> <p>13 that under The Controlled Substances Act,</p> <p>14 AmerisourceBergen has a duty to maintain</p> <p>15 effective controls to prevent diversion</p> <p>16 of certain substances?</p> <p>17 A. Yes. We have to maintain</p> <p>18 effective controls from diversion. I</p> <p>19 just don't know duty was included in that</p> <p>20 or not.</p> <p>21 Q. I'll represent to you that</p> <p>22 the word "duty" is in there.</p> <p>23 So you do understand that</p> <p>24 you have an obligation to maintain</p>

<p style="text-align: right;">Page 26</p> <p>1 effective controls as part of your 2 serving as a registrant and selling 3 controlled substances? 4 A. Yes, we have an 5 obligation -- there's a regulatory 6 responsibility to have effective controls 7 to prevent diversion. 8 Q. What's your understanding of 9 what that means? 10 MR. NICHOLAS: Object to the 11 form. I object to the question. 12 It's too big. 13 THE WITNESS: I guess -- 14 that's an overarching statement. 15 If you can clarify what 16 instances within the Code of 17 Federal Regulations you're 18 referring to with the effective 19 controls, there's several 20 different areas in there. 21 MR. PIFKO: We're going to 22 have to not have any speaking 23 objections. Saying "too big" is 24 not an objection, and it's</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. PIFKO: Well, if you 2 tell the witness the question is 3 too big and then he responds, I 4 don't know how to answer it, it's 5 too big, then we've got a problem 6 here because you're telling him 7 what to say. 8 Do you understand? 9 MR. NICHOLAS: No, I'm not 10 telling him what to say. I'm 11 making an objection. So why don't 12 you just go ahead? 13 MR. PIFKO: I hope that we 14 can have compliance with the rules 15 here. And understanding that 16 we're going to be doing that, I'm 17 going to proceed. 18 BY MR. PIFKO: 19 Q. You have a duty to maintain 20 effective controls to prevent against 21 diversion, correct? 22 A. Correct. 23 Q. Do you understand what that 24 means?</p>
<p style="text-align: right;">Page 27</p> <p>1 obviously influencing the 2 witness's testimony. 3 So you can state your 4 objection with clarity. You can 5 state form or foundation. But 6 that's all you can do, okay? 7 MR. NICHOLAS: Mark, I 8 appreciate the instruction, but 9 I'm going to have to handle my own 10 objections the way I see fit. 11 MR. PIFKO: If you're going 12 to be coaching the witness 13 throughout the day, we're going to 14 stop the deposition, we're going 15 to seek sanctions and we're going 16 come back here. 17 Do you understand that? 18 MR. NICHOLAS: You can do 19 whatever you think you need to do. 20 I'm not coaching the witness. I'm 21 stating what I think are 22 appropriate objections in the 23 appropriate manner. And you can 24 proceed.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes, I understand what that 2 means. 3 Q. What is your understanding 4 of what that means? 5 A. We have to have effective 6 controls to prevent diversion, both on 7 the physical security operational side, 8 as well as ensuring we only distribute to 9 licensed entities, and a duty to report 10 suspicious orders. 11 Q. You mentioned there, "duty 12 to report suspicious orders." 13 If I refer to that as the 14 "reporting requirement," do you have an 15 understanding of that? 16 A. If you are referring to the 17 regulation that we have to design and 18 operate a system to identify suspicious 19 orders and report those suspicious orders 20 to DEA, yes. 21 Q. Okay. So at various points 22 today we might refer to that as the 23 "reporting requirement." 24 Will you understand that?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. Yes. If that's the 2 definition we're going to go with, yes. 3 Q. Okay. There's also a 4 requirement to provide records of all 5 your shipments through the ARCOS system. 6 Are you familiar with that? 7 A. Only certain drugs are 8 within the -- are considered ARCOS 9 products. So not all controlled 10 substances are reported through ARCOS. 11 Q. Fair enough. 12 But to the extent a 13 substance is under the requirement to 14 report to ARCOS, you understand that 15 there's an obligation to do so, correct? 16 A. Yes. 17 Q. Okay. You understand that 18 the reporting to ARCOS is different than 19 the reporting of a suspicious order, 20 correct? 21 A. Yes. 22 Q. So complying with the ARCOS 23 requirement does not equate to compliance 24 with the suspicious order reporting</p>	<p style="text-align: right;">Page 32</p> <p>1 well? 2 A. I don't -- I don't think 3 there's a requirement not to ship. We do 4 not ship suspicious orders. 5 Q. So it's your position that 6 there's no requirement under the law to 7 not ship a suspicious order? 8 A. Not that I know of. 9 Q. You testified in the West 10 Virginia Attorney General litigation in 11 2016, correct? 12 A. Yes. 13 Q. Let's back up for a second. 14 When we talk about this idea 15 to prevent diversion, do you have an 16 understanding of why there is such a 17 requirement? 18 MR. NICHOLAS: Object to the 19 form. 20 THE WITNESS: There's 21 certain -- as a distributor, the 22 DEA outlines certain requirements 23 that distributors -- I'll speak as 24 for a distributor -- has to adhere</p>
<p style="text-align: right;">Page 31</p> <p>1 requirement. 2 Do you understand that? 3 A. Yes. 4 Q. Have you heard of the 5 shipping requirement? 6 A. No. 7 Q. Are you familiar with the 8 Masters Pharmaceutical case? 9 A. I've seen it, yes. 10 Q. Are you aware that that case 11 discusses something called the shipping 12 requirement? 13 A. I've seen that reference to 14 shipping requirement. 15 Q. Do you know what that is? 16 A. No. 17 Q. You have no understanding of 18 what the shipping requirement is? 19 A. I've never seen it in the 20 Code of Federal Regulations. 21 Q. Do you understand that in 22 addition to reporting a suspicious order 23 to the DEA, AmerisourceBergen is required 24 to -- not to ship a suspicious order as</p>	<p style="text-align: right;">Page 33</p> <p>1 to in order to maintain effective 2 controls to prevent diversion. 3 And those are the -- those 4 are the regulations that our 5 company follows, and those are the 6 ones we have implemented in order 7 to maintain our registration. 8 BY MR. PIFKO: 9 Q. Right. So what I'm trying 10 to understand is, do you have an 11 understanding about what the purpose is 12 of those rules? 13 MR. NICHOLAS: Object to the 14 form. 15 THE WITNESS: The purpose is 16 to maintain effective controls 17 within the distribution center. 18 BY MR. PIFKO: 19 Q. And why do we want to do 20 that? 21 MR. NICHOLAS: Object to the 22 form. 23 THE WITNESS: Because those 24 are the requirements of the</p>

<p style="text-align: right;">Page 34</p> <p>1 regulations.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Do you have an understanding</p> <p>4 about why those are the requirements of</p> <p>5 the regulations?</p> <p>6 MR. NICHOLAS: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Those are the</p> <p>9 regulations that we have to follow</p> <p>10 in order to keep our registration.</p> <p>11 To be a distributor, you have to</p> <p>12 meet those requirements in the</p> <p>13 regulations.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. Are you familiar with the</p> <p>16 scheduling system of controlled</p> <p>17 substances?</p> <p>18 A. I understand that there's</p> <p>19 Schedules 1 through IV, yes.</p> <p>20 Q. Do you know what a Schedule</p> <p>21 I substance is?</p> <p>22 A. I believe -- I don't know</p> <p>23 the official, but it's no -- I believe it</p> <p>24 references there's no medical purpose.</p>	<p style="text-align: right;">Page 36</p> <p>1 Schedule II substance has a high</p> <p>2 potential for abuse?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: I don't know</p> <p>6 that. But it's a Schedule II.</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. What do you mean by, "I</p> <p>9 don't know that but it's a Schedule II"?</p> <p>10 A. You asked if I knew whether</p> <p>11 the government stated -- I don't know if</p> <p>12 the government stated that. But I know,</p> <p>13 by it being a Schedule II, it has a high</p> <p>14 potential of abuse.</p> <p>15 Q. So you do know that a</p> <p>16 Schedule II substance has a high</p> <p>17 potential for abuse, correct?</p> <p>18 A. That's why it's a Schedule</p> <p>19 II.</p> <p>20 Q. And you know that this case</p> <p>21 primarily concerns Schedule II</p> <p>22 substances?</p> <p>23 A. I don't know -- I don't know</p> <p>24 that.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. How about Schedule II, do</p> <p>2 you know what a Schedule II substance is?</p> <p>3 A. It's a Schedule II</p> <p>4 controlled substance, yes.</p> <p>5 Q. But what's -- what are</p> <p>6 attributes of a Schedule II substance --</p> <p>7 MR. NICHOLAS: Object.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. -- based on your</p> <p>10 understanding?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form.</p> <p>13 Go ahead.</p> <p>14 THE WITNESS: The Schedule</p> <p>15 II, III, IV, V are all scheduled</p> <p>16 as to their potential for abuse.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. Do you understand that a</p> <p>19 Schedule II substance has a high</p> <p>20 potential for abuse?</p> <p>21 A. It's higher than III and IV</p> <p>22 and V.</p> <p>23 Q. Do you understand that the</p> <p>24 United States government has said that a</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. We'll get into that.</p> <p>2 A. Okay.</p> <p>3 Q. Do you know what a Schedule</p> <p>4 III substance is?</p> <p>5 A. It's a controlled substance</p> <p>6 that has a -- that has a potential of</p> <p>7 abuse but not as high as a Schedule II.</p> <p>8 Q. So a Schedule I -- Schedule</p> <p>9 II substance has a high potential for</p> <p>10 abuse and a Schedule III substance has a</p> <p>11 potential for abuse but may be less high</p> <p>12 than Schedule II, correct?</p> <p>13 A. Correct.</p> <p>14 Q. You understand that this</p> <p>15 case concerns opioid products, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Do you know what an opioid</p> <p>18 product is?</p> <p>19 A. A product that contains</p> <p>20 opioid.</p> <p>21 Q. Do you know what the word</p> <p>22 "opioid" means?</p> <p>23 A. I believe that's the active</p> <p>24 ingredient in the drug.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Do you know what the active 2 ingredient in morphine is? 3 A. I don't know. 4 Q. The word "opiate," it 5 derives from opium. 6 Do you understand that? 7 A. Yes. 8 Q. Opium comes from a poppy 9 flower. 10 Do you understand that? 11 A. I understand that, yes. 12 Q. So a product that is an 13 opioid is derived from the opium. 14 Do you have an understanding 15 of that? 16 MR. NICHOLAS: Objection. 17 THE WITNESS: I don't know 18 the medical makeup and how -- of 19 how an opioid is manufactured. I 20 don't know that. 21 BY MR. PIFKO: 22 Q. But you understand that the 23 active ingredient is derived from some 24 opiate-like substance?</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes. 2 Q. When we use the word 3 "diversion," do you have an understanding 4 about what that means? 5 A. It depends on the context. 6 Q. In the context of The 7 Controlled Substances Act. 8 MR. NICHOLAS: Object to the 9 form. 10 THE WITNESS: So diversion 11 is that a drug that's -- well, 12 again, it depends. Even with 13 controlled substances, it could 14 be -- it could have several 15 different meanings. So if it's 16 diverted from theft, it could be a 17 diversion because of a bad 18 prescription. 19 It's when a drug -- I've 20 seen it referenced as a drug that 21 leaves the normal distribution 22 channels. 23 BY MR. PIFKO: 24 Q. Okay. What's the normal</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. NICHOLAS: Objection. 2 Asked and answered. 3 THE WITNESS: I know it's an 4 opioid. I don't know the 5 derivatives. 6 BY MR. PIFKO: 7 Q. Can you name any substances 8 that you understand to be classified as 9 an opioid? 10 A. Oxycodone, hydrocodone are 11 the two major ones. 12 Q. Any others? 13 A. I know those for sure. I 14 don't want to speculate on some of the 15 others. 16 Q. Do you have an understanding 17 that at certain relevant time periods in 18 this case certain hydrocodone combination 19 products were classified as Schedule III 20 substances? 21 A. Yes. 22 Q. And they were later 23 reclassified as a Schedule II substance. 24 Do you understand that?</p>	<p style="text-align: right;">Page 41</p> <p>1 distribution channel? 2 A. That -- the closed system of 3 manufacture to DEA registrant distributor 4 to DEA registrant dispenser. 5 Q. Do you have an understanding 6 about what the closed system is? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: The closed 10 system as it pertains to? 11 BY MR. PIFKO: 12 Q. Well, you just used it in 13 your answer, so I want to know what you 14 were referring to. 15 A. The closed system of 16 controlled substances? I just want to 17 make sure I understand your question. 18 Q. You talked about a drug 19 leaving the normal channels within the 20 closed system. So I'm trying to 21 understand what you meant by "closed 22 system." 23 A. I said distribution channel, 24 I didn't say closed system.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. I think you said within the 2 closed system, or something to that 3 effect. 4 A. I thought I said 5 distribution channel. 6 Q. We don't need to fight about 7 what you said or didn't say. 8 What I just want to know, 9 your -- do you have an understanding 10 about what the closed system is under The 11 Controlled Substances Act? 12 MR. NICHOLAS: Object to the 13 form. 14 THE WITNESS: The closed 15 system, as I've heard it referred 16 to, is that the DEA sets the 17 quotas of how much product can be 18 produced, then manufactured; those 19 products are transferred to the 20 distributor through ARCOS, which 21 is maintained -- transferred to 22 the distributor. 23 And then the distributor 24 transfers to the pharmacy or the</p>	<p style="text-align: right;">Page 44</p> <p>1 BY MR. PIFKO: 2 Q. Well, you said that that's 3 the legitimate one, the one you just 4 described, correct? 5 A. That's the -- you asked me 6 what the closed distribution was, and 7 that's what the closed distribution is. 8 Q. And you understand that your 9 duty to prevent diversion is to prevent 10 applicable controlled substances from 11 exiting that system? 12 MR. NICHOLAS: Object to the 13 form. 14 THE WITNESS: Our 15 responsibility is to ensure that 16 we distribute FDA-approved drugs 17 from the -- that we maintain in 18 our distribution centers to 19 licensed entities. 20 BY MR. PIFKO: 21 Q. And what do you mean by 22 "licensed entities"? 23 A. Pharmacies, hospitals, DEA 24 registrants and State Board of Pharmacy</p>
<p style="text-align: right;">Page 43</p> <p>1 dispenser with an ARCOS 2 transaction, which closes the 3 distribution, as far as DEA 4 tracking goes. 5 BY MR. PIFKO: 6 Q. So there are legitimate 7 channels of distribution within that 8 system, correct? 9 MR. NICHOLAS: Object to the 10 form. 11 THE WITNESS: That is the -- 12 that is the legitimate 13 distribution channel. 14 BY MR. PIFKO: 15 Q. Okay. And then there could 16 be -- a channel of distribution outside 17 of that system, that would be 18 illegitimate, correct? 19 MR. NICHOLAS: Object to the 20 form. 21 THE WITNESS: I can't say 22 what type of other distribution. 23 I can only comment on our 24 distribution system.</p>	<p style="text-align: right;">Page 45</p> <p>1 registrants. 2 Q. And you understand that 3 those registrants also have duties to 4 maintain effective controls as well? 5 MR. NICHOLAS: Object to the 6 form. 7 THE WITNESS: They have 8 their own regulations that they 9 must follow, correct. 10 BY MR. PIFKO: 11 Q. So the idea of preventing 12 diversion is to prevent substances from 13 getting into illegal hands, correct? 14 MR. NICHOLAS: Object to the 15 form. 16 THE WITNESS: Each 17 registrant has its 18 responsibilities to maintain 19 effective controls to prevent 20 diversion. We maintain those 21 within our registrant's capacity, 22 correct. 23 BY MR. PIFKO: 24 Q. Can you give me an example</p>

<p style="text-align: right;">Page 46</p> <p>1 of diversion?</p> <p>2 MR. NICHOLAS: Objection.</p> <p>3 Object to the form.</p> <p>4 THE WITNESS: As I stated,</p> <p>5 diversion can be many different</p> <p>6 things. So I need some more</p> <p>7 clarification of what type of</p> <p>8 diversion you're talking about.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. Let's make it specific to</p> <p>11 the issues in this case.</p> <p>12 So, again, you understand</p> <p>13 this case concerns opioid products,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And those are, for the most</p> <p>17 part, Schedule II substances under The</p> <p>18 Controlled Substances Act, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Can you give me an</p> <p>21 example of what it means to have an</p> <p>22 opioid product diverted, as we were</p> <p>23 talking about this under The Controlled</p> <p>24 Substances Act?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Well, it's your -- among the</p> <p>2 responsibilities you have with the</p> <p>3 company, one of them is to manage the</p> <p>4 company's efforts to maintain effective</p> <p>5 controls against diversion, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And so I understand that</p> <p>8 maybe there might be several examples,</p> <p>9 but I'd like to get your understanding of</p> <p>10 the types of situations we're talking</p> <p>11 about here.</p> <p>12 So you talked about sale to</p> <p>13 an unlicensed --</p> <p>14 MR. NICHOLAS: I'm going</p> <p>15 to -- I want to interpose an</p> <p>16 objection. This is not coaching,</p> <p>17 but the question is tremendously</p> <p>18 broad.</p> <p>19 MR. PIFKO: You can say</p> <p>20 broad as an objection.</p> <p>21 "Tremendously" is not necessary.</p> <p>22 That's -- we're good here.</p> <p>23 MR. NICHOLAS: Okay. Broad.</p> <p>24 So I would ask you to narrow it.</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. NICHOLAS: Object to the</p> <p>2 form.</p> <p>3 THE WITNESS: There's a lot</p> <p>4 of different ways drugs can be</p> <p>5 diverted from our distribution</p> <p>6 center. Diversion could be if</p> <p>7 we -- if we, not ABC -- but if a</p> <p>8 company diverted product to an</p> <p>9 unlicensed location, a</p> <p>10 nonregistered location, that could</p> <p>11 be diversion.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Any other --</p> <p>14 MR. NICHOLAS: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: I'm not going</p> <p>17 to sit here and try to list all</p> <p>18 the areas that could be -- where</p> <p>19 diversion could occur, because we</p> <p>20 could be here for a long time.</p> <p>21 And that's why you have</p> <p>22 effective controls to prevent</p> <p>23 diversion.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. PIFKO: Your objection</p> <p>2 is noted.</p> <p>3 MR. NICHOLAS: The witness</p> <p>4 has asked you to narrow it.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. So you're the person from</p> <p>7 AmerisourceBergen who is responsible for</p> <p>8 ensuring compliance with The Controlled</p> <p>9 Substances Act requirement to maintain</p> <p>10 effective controls against diversion,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And so I'd like an example,</p> <p>14 a bunch of examples, of what diversion</p> <p>15 is, from you.</p> <p>16 MR. NICHOLAS: Same</p> <p>17 objection.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: So what we do</p> <p>20 to prevent diversion is --</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. I'm not asking what you do</p> <p>23 to prevent diversion --</p> <p>24 MR. NICHOLAS: Hold on.</p>

<p style="text-align: right;">Page 50</p> <p>1 BY MR. PIFKO: 2 Q. -- just an example of what 3 diversion is. 4 MR. NICHOLAS: Hold on. 5 Let's stay on the record. 6 You can't interrupt him when 7 he's answering the question. 8 MR. PIFKO: He needs to 9 answer the question asked. I 10 don't -- we're not going to have 11 speeches where he talks about 12 things that aren't asked. 13 MR. NICHOLAS: You didn't 14 hear his answer. He said five 15 words, and you interrupted him. 16 MR. PIFKO: He said what we 17 do to prevent diversion. And 18 that's not what I asked. I asked 19 what diversion is. 20 MR. NICHOLAS: Those were 21 his first five words. You're 22 going to have to let him answer 23 the question. 24 You're going to have to</p>	<p style="text-align: right;">Page 52</p> <p>1 and I'll rephrase it. And we'll work 2 through it. But I would appreciate your 3 testimony in responding to exactly the 4 questions that I ask. 5 Do we have an agreement 6 about that? 7 MR. NICHOLAS: Objection. 8 Because he's been doing that. 9 THE WITNESS: I'm trying to 10 answer your question, but you 11 won't let me give my -- I did 12 state that there's a lot of 13 different areas where diversion 14 could occur. 15 And you asked for a list of 16 them. I'm going to tell you how 17 we prevent diversion and then from 18 that area, anywhere in there, a 19 diversion can occur. 20 And that's how I was going 21 to answer the question. 22 So we first have physical 23 security controls to prevent 24 diversion; we have cages and</p>
<p style="text-align: right;">Page 51</p> <p>1 let -- you ask a question, the 2 witness is then entitled to say 3 what he wants in answering the 4 question. 5 MR. PIFKO: He's not 6 entitled to say anything he wants, 7 he's entitled to answer the 8 question. 9 MR. NICHOLAS: No, he's 10 entitled to say what he wants -- 11 what he believes is answering the 12 question, and then you can ask 13 another question. So don't 14 interrupt him again, please. 15 BY MR. PIFKO: 16 Q. I'm sure that in preparing 17 for this deposition, your counsel told 18 you to listen to the question. So I want 19 you to be very careful and listen to the 20 questions that I ask, okay? 21 Do you understand that? 22 A. Yes. 23 Q. And so, again, if you don't 24 understand a question, you let me know,</p>	<p style="text-align: right;">Page 53</p> <p>1 vaults that are required by the 2 CFR. 3 We have -- we do background 4 checks on our employees. We do 5 due diligence of our customers to 6 ensure that they're licensed and 7 in good standing with the DEA and 8 Boards of Pharmacy. 9 So there's a whole host of 10 things that we do within the -- as 11 a licensed distributor, to prevent 12 diversion. 13 If we weren't doing those 14 things, diversion could occur at 15 any one of those steps. So if we 16 didn't -- 17 BY MR. PIFKO: 18 Q. That's not the question I 19 asked. I asked you to give examples of 20 diversion. You're giving me examples of 21 prevention of diversion and that's not 22 the question that was asked. 23 MR. NICHOLAS: I object. 24 BY MR. PIFKO:</p>

Page 54

1 Q. We'll go through it -- we'll
2 go through it again.
3 So let's talk about
4 diversion of a Schedule II controlled
5 substance at a pharmacy.
6 Can you explain what
7 potential areas of diversion are in that
8 context?
9 MR. NICHOLAS: Object to the
10 form.
11 THE WITNESS: I'm not
12 responsible for the diversion that
13 occurs within a pharmacy. If a
14 pharmacy has -- is filling
15 prescriptions that are invalid or
16 if a pharmacy is selling
17 prescriptions -- not
18 prescriptions -- or diverting
19 drugs out the back door, you know,
20 I have no eyes to that.
21 BY MR. PIFKO:
22 Q. Okay. But those are some
23 examples of a pharmacy filling
24 prescriptions or selling controlled

Page 55

1 substances without a valid prescription,
2 that would be a diversion, correct?
3 A. As it stands -- is my
4 understanding, yes.
5 Q. And if -- you said if
6 there's -- the pills are flowing out the
7 back door without being sold to anyone or
8 theft, or something like that, that would
9 be diversion, correct?
10 A. That could be a type of
11 diversion, yes.
12 Q. What about a prescription
13 that's written by a doctor who doesn't
14 have a valid DEA registration, is that --
15 if someone sells pills to somebody who
16 has that kind of a prescription, is that
17 diversion?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: That would be
21 the responsibility of the
22 pharmacy. I mean, the distributor
23 has no line of sight on the doctor
24 who is writing prescriptions to

Page 56

1 the pharmacy.
2 BY MR. PIFKO:
3 Q. Do you understand why we
4 want to prevent these diversion
5 activities to occur?
6 MR. NICHOLAS: Object to the
7 form. Asked and answered.
8 THE WITNESS: When you say
9 "we," I'm not understanding your
10 question of who is the "we."
11 BY MR. PIFKO:
12 Q. We're all Americans here,
13 and the law is a law of the American
14 jurisprudence, and it's requiring that.
15 And so when I say "we," I mean the people
16 of the United States.
17 So the question is, do you
18 understand why, when enacting that law,
19 we want to prevent diversion in the way
20 we just described?
21 MR. NICHOLAS: Well, I'll
22 object to the form of that
23 question.
24 THE WITNESS: That's why

Page 57

1 there's DEA regulations, because
2 of the -- to prevent diversion.
3 BY MR. PIFKO:
4 Q. And is diversion a good
5 thing?
6 MR. NICHOLAS: Object to the
7 form.
8 THE WITNESS: Is diversion a
9 good thing? I don't think so.
10 BY MR. PIFKO:
11 Q. Why not?
12 MR. NICHOLAS: Objection.
13 Object to the form.
14 THE WITNESS: In the context
15 of -- in the context of diversion
16 from a licensed entity, that's --
17 that's not good.
18 BY MR. PIFKO:
19 Q. And why not?
20 A. Because it's in violation of
21 the regulation.
22 Q. Is there -- other than it
23 violating the regulation, is there any
24 impact of diversion?

<p style="text-align: right;">Page 58</p> <p>1 MR. NICHOLAS: Object to the 2 form. 3 THE WITNESS: I'm -- I'm not 4 understanding your question. 5 If there's diversion of the 6 product, that's -- as I indicated, 7 that's against the regulations. 8 That's a bad thing. 9 BY MR. PIFKO: 10 Q. What I'm trying to 11 understand is, these are situations that 12 the regulations are designed to prevent 13 from occurring, correct? 14 A. Yes. 15 Q. And I'm trying to understand 16 why is it that we would have regulations 17 to prevent these things from occurring. 18 Do you have an understanding 19 of that? 20 MR. NICHOLAS: I'll object 21 to the form. 22 THE WITNESS: It's the same 23 reason why we have regulations for 24 the approval of the drugs, of how</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. I'm going to give you an 2 opportunity to speak. 3 But what I'm hearing -- and 4 so you correct me if I'm wrong, but what 5 I'm hearing from you is that 6 AmerisourceBergen Corporation has zero 7 understanding of why we should stop 8 diversion under The Controlled Substances 9 Act? 10 MR. NICHOLAS: I'll object 11 to the form of the question. 12 That's a false statement. 13 THE WITNESS: That's not 14 what I'm saying. 15 BY MR. PIFKO: 16 Q. The jury is watching the 17 video and that's what they're seeing, 18 because that's what I'm seeing. 19 MR. NICHOLAS: You don't 20 need to grandstand with references 21 to the jury -- 22 MR. PIFKO: And I -- 23 MR. NICHOLAS: -- just ask 24 the questions.</p>
<p style="text-align: right;">Page 59</p> <p>1 you store and manage the drugs and 2 how -- you know, that's the basis 3 of our system. 4 BY MR. PIFKO: 5 Q. And what is the reason for 6 that? 7 MR. NICHOLAS: This has been 8 asked and answered about seven or 9 eight times now. I will object. 10 THE WITNESS: The reason is 11 to have effective controls to 12 prevent diversion. I think I've 13 said that several times. 14 BY MR. PIFKO: 15 Q. And why do we want to 16 prevent diversion? 17 MR. NICHOLAS: Objection. 18 Asked and answered. You're asking 19 the same question again and again. 20 And he's answering it again and 21 again. 22 THE WITNESS: What's the 23 question one more time? I mean -- 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 61</p> <p>1 BY MR. PIFKO: 2 Q. I genuinely would like a 3 response. And I'm sure that you can 4 provide an answer. I'm trying to get 5 that from you. 6 MR. NICHOLAS: The witness 7 has been providing an answer. 8 You can go ahead. 9 THE WITNESS: And what was 10 that, I mean, your last statement, 11 that AmerisourceBergen has -- 12 BY MR. PIFKO: 13 Q. So I've asked you, why do we 14 want to prevent diversion? And what I'm 15 hearing back is, that's what the rule is. 16 And I'm trying to 17 understand, is it AmerisourceBergen's 18 position in this litigation that other 19 than following the rules, there's no 20 reason, it has no understanding of why 21 we're trying to prevent diversion? 22 MR. NICHOLAS: Object to the 23 form of the question. 24 THE WITNESS: I think I've</p>

<p style="text-align: right;">Page 62</p> <p>1 answered the question, and I --</p> <p>2 your understanding or your</p> <p>3 statement that we don't have any</p> <p>4 other intent other than following</p> <p>5 the regulations is incorrect.</p> <p>6 I mean, there's rules and</p> <p>7 regulations in place for the</p> <p>8 proper manufacture, distribution,</p> <p>9 dispensing of, in this case,</p> <p>10 controlled substances.</p> <p>11 And that's because these</p> <p>12 items, the opioids, you said, have</p> <p>13 a potential for abuse. So you</p> <p>14 have to have additional</p> <p>15 requirements to make sure you're</p> <p>16 handling them properly.</p> <p>17 And each registrant in the</p> <p>18 channel has a responsibility. ABC</p> <p>19 has our responsibilities. We take</p> <p>20 them very seriously. We make sure</p> <p>21 we only buy them from</p> <p>22 manufacturers. We store them</p> <p>23 properly. We make sure they're</p> <p>24 checked, double-checked,</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. We'll establish --</p> <p>2 MR. NICHOLAS: Hold on.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. -- we're going to establish</p> <p>5 that later.</p> <p>6 MR. NICHOLAS: I'm going to</p> <p>7 object to that and move to strike</p> <p>8 the mischaracterization and the</p> <p>9 inappropriate characterization</p> <p>10 slander in the testimony.</p> <p>11 Proceed, but please don't --</p> <p>12 MR. PIFKO: I --</p> <p>13 MR. NICHOLAS: Please don't</p> <p>14 tell him he's making false</p> <p>15 statements.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. I think we were getting</p> <p>18 closer there when you said we want to</p> <p>19 prevent diversion because these drugs</p> <p>20 have a potential for high abuse.</p> <p>21 You said that, correct?</p> <p>22 MR. NICHOLAS: Object to the</p> <p>23 form.</p> <p>24 Go ahead.</p>
<p style="text-align: right;">Page 63</p> <p>1 triple-checked. We make sure</p> <p>2 they're stored appropriately in</p> <p>3 cages and vaults. We vet our</p> <p>4 employees. We train our</p> <p>5 employees. We vet our customers.</p> <p>6 And we take it very</p> <p>7 seriously. So we only distribute</p> <p>8 products to those pharmacies and</p> <p>9 dispensers and hospitals that are</p> <p>10 in good standing with DEA and the</p> <p>11 Board of Pharmacy. So we adhere</p> <p>12 to our requirements.</p> <p>13 Those drugs aren't diverted</p> <p>14 while they're under our control.</p> <p>15 I don't know how much more clearly</p> <p>16 I can state that.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. We'll get into that later.</p> <p>19 There's a lot of misstatements in your</p> <p>20 thing, but we don't have to argue about</p> <p>21 that.</p> <p>22 MR. NICHOLAS: I'll object</p> <p>23 to that and --</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 65</p> <p>1 THE WITNESS: Again, I</p> <p>2 don't -- we, as distributors,</p> <p>3 don't -- don't identify what drugs</p> <p>4 are -- have high abuse. That's</p> <p>5 done by DEA and FDA.</p> <p>6 We have a -- we are a</p> <p>7 distributor, we have our</p> <p>8 requirements that we must follow</p> <p>9 to protect those drugs while</p> <p>10 they're under our control. And we</p> <p>11 take that very seriously and we do</p> <p>12 that.</p> <p>13 I'm not understanding what</p> <p>14 more you want from me, other than</p> <p>15 our regulatory and our obligations</p> <p>16 to protect and ensure those drugs</p> <p>17 are not diverted while under our</p> <p>18 control.</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. And you want to ensure that</p> <p>21 they're not diverted while they're under</p> <p>22 your control because they have a high</p> <p>23 potential -- whether you said it or</p> <p>24 not -- because they have a high potential</p>

<p style="text-align: right;">Page 66</p> <p>1 for abuse under the system; is that 2 correct?</p> <p>3 MR. NICHOLAS: Object to the 4 form of the question.</p> <p>5 THE WITNESS: Because they 6 are a controlled substance and 7 because they're a prescription 8 product.</p> <p>9 We treat our prescription 10 drugs with the same manner as the 11 opioids. I mean, we have 12 additional controls, depending 13 upon whether it's Schedule II or 14 III through IV, whether they're in 15 a vault or a cage.</p> <p>16 But we protect all the 17 product, we prevent diversion from 18 all products.</p> <p>19 BY MR. PIFKO: 20 Q. Do you have an understanding 21 that we want to prevent the unlawful 22 distribution of opioids to protect the 23 public health? 24 MR. NICHOLAS: Objection.</p>	<p style="text-align: right;">Page 68</p> <p>1 have an understanding that you're 2 required to prevent diversion of opioid 3 products to protect the public health?</p> <p>4 MR. NICHOLAS: Objection.</p> <p>5 The witness is not required to 6 answer yes or no. And he has 7 answered the question.</p> <p>8 THE WITNESS: And I -- I -- 9 I think I stated what our 10 obligations are under the 11 requirements.</p> <p>12 BY MR. PIFKO: 13 Q. I'm not asking what your 14 obligations are under the requirements. 15 I'm asking you if the 16 company understands that the reason for 17 preventing diversion of opioid products 18 is, in part, to protect public health?</p> <p>19 MR. NICHOLAS: I'll object 20 to the form of the question. And 21 add as a basis at this point that 22 I don't believe any of this is 23 covered in any of the topics of 24 your 30(b)(6) notice.</p>
<p style="text-align: right;">Page 67</p> <p>1 Object to the form.</p> <p>2 THE WITNESS: Can you state 3 that question again, please?</p> <p>4 BY MR. PIFKO: 5 Q. Do you have an understanding 6 that you're required to prevent diversion 7 of opioid products to protect the public 8 health?</p> <p>9 MR. NICHOLAS: Object to the 10 form.</p> <p>11 THE WITNESS: I understand 12 that we have an obligation to have 13 effective controls to prevent 14 diversion because of our 15 regulatory responsibilities and 16 duties. And that's what we 17 implement.</p> <p>18 I'm not here to comment 19 on --</p> <p>20 BY MR. PIFKO: 21 Q. That's not -- you can answer 22 yes or no. That wasn't an answer to my 23 question. 24 So my question is, do you</p>	<p style="text-align: right;">Page 69</p> <p>1 So we're way far afield 2 here.</p> <p>3 THE WITNESS: And I'm not -- 4 I don't want to comment on what 5 our duty is to public health.</p> <p>6 BY MR. PIFKO: 7 Q. So you have no comment about 8 whether you have a duty to protect public 9 health? Is that your answer?</p> <p>10 A. We have a duty to have 11 effective controls to prevent diversion 12 as the products are within our 13 distribution channel.</p> <p>14 And we have a duty to ensure 15 that we only sell products to licensed 16 pharmacies and dispensers and hospitals. 17 And that is our duty.</p> <p>18 Q. In carrying out your duty to 19 prevent diversion, does AmerisourceBergen 20 consider the impact on the public?</p> <p>21 MR. NICHOLAS: Object to the 22 form of the question. This is not 23 in your notice. You're way far 24 afield. You've asked this</p>

<p style="text-align: right;">Page 70</p> <p>1 question many, many times. And 2 it's been answered. 3 THE WITNESS: I think I said 4 what I feel our duty is, to ensure 5 we have proper controls to prevent 6 diversion while the drugs are 7 within our control. 8 BY MR. PIFKO: 9 Q. You're not answering the 10 question. I didn't ask you what your 11 duty was. 12 I asked you if, in carrying 13 out your duty, does AmerisourceBergen 14 consider the impact on the public? 15 MR. NICHOLAS: Object to the 16 form of the question. He has been 17 answering the question a number of 18 times. I suggest that we move on. 19 THE WITNESS: I think I've 20 answered the question. 21 BY MR. PIFKO: 22 Q. You haven't. It's very 23 clear, you have not answered the 24 question.</p>	<p style="text-align: right;">Page 72</p> <p>1 answer to a question that's not being 2 asked. Let's start over here. 3 I'm trying to ask, does 4 AmerisourceBergen consider public health 5 when it's carrying out its duty to 6 prevent diversion? 7 MR. NICHOLAS: Object to the 8 form of the question. Asked and 9 answered. Outside the scope of 10 the notice. 11 THE WITNESS: We consider 12 our responsibilities that we're 13 obligated to follow to ensure that 14 products are handled 15 appropriately, safely and securely 16 within the supply channel under 17 our control. 18 BY MR. PIFKO: 19 Q. Is public health one of 20 those considerations? 21 MR. NICHOLAS: Object to the 22 form of the question. Come on. 23 THE WITNESS: It's not 24 something that -- our</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. NICHOLAS: Object. 2 That's just a statement. There's 3 nothing for you to say right now. 4 MR. PIFKO: Yeah, there is. 5 I've -- 6 MR. NICHOLAS: There's no 7 question pending. 8 MR. PIFKO: -- I've asked 9 the question and we haven't had an 10 answer. I've been trying to ask 11 it for the last ten minutes. 12 THE WITNESS: And I've 13 answered -- 14 MR. PIFKO: And I still 15 haven't gotten an answer -- 16 THE WITNESS: -- the 17 question of what our 18 responsibilities are. 19 BY MR. PIFKO: 20 Q. I'm not asking you -- but 21 that's not what the question is. 22 A. That's my answer. 23 Q. You're not answering the 24 question. You can't just make up an</p>	<p style="text-align: right;">Page 73</p> <p>1 consideration is how we -- who we 2 purchase the products from, how we 3 store the products and who we 4 distribute those products to. 5 We don't have any effect on 6 the public health through 7 prescriptions that are being 8 written, the pharmacies that are 9 filling them. We have no control 10 over that. 11 Our responsibility is, in 12 the supply chain, is to ensure 13 that we buy FDA-approved drugs, we 14 keep them securely and we give 15 them to those that dispense those 16 drugs. 17 And the duty that they have, 18 I'm not going to comment on it. 19 And I think I've answered 20 what our responsibility is within 21 the supply chain. 22 BY MR. PIFKO: 23 Q. And I'm not trying to put 24 answers in your mouth. I'm trying to</p>

<p style="text-align: right;">Page 74</p> <p>1 understand what your answer is.</p> <p>2 A. But that's my answer.</p> <p>3 Q. But my question is, is</p> <p>4 public health one of those</p> <p>5 considerations? Is it or isn't it?</p> <p>6 You just tell me. I'm</p> <p>7 not -- you say whatever answer you want</p> <p>8 to say.</p> <p>9 MR. NICHOLAS: He's answered</p> <p>10 the question many, many times.</p> <p>11 You keep asking him the same</p> <p>12 question over and over.</p> <p>13 MR. PIFKO: He's not</p> <p>14 answering the question.</p> <p>15 MR. NICHOLAS: I'll object.</p> <p>16 MR. PIFKO: You can object,</p> <p>17 but he's not answering.</p> <p>18 MR. NICHOLAS: I'm</p> <p>19 objecting. You're saying he's not</p> <p>20 answering the question and I'm</p> <p>21 saying he is and he says he is.</p> <p>22 THE WITNESS: I mean, I can</p> <p>23 restate that again.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 76</p> <p>1 selling to the public.</p> <p>2 So, again, you're asking me</p> <p>3 a question that doesn't apply on</p> <p>4 the distribution side, because</p> <p>5 we're selling it --</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. I'm not asking about</p> <p>8 compliance.</p> <p>9 MR. NICHOLAS: You're</p> <p>10 interrupting the witness.</p> <p>11 THE WITNESS: We're buying</p> <p>12 it from the manufacturer and we're</p> <p>13 selling it -- we're selling it to</p> <p>14 a pharmacy or hospital that has</p> <p>15 obligations of who they dispense</p> <p>16 those to and what prescriptions</p> <p>17 they fill.</p> <p>18 We're in the middle of the</p> <p>19 chain. The public health, we</p> <p>20 don't deal with the public health.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. So you don't think about the</p> <p>23 public health in carrying out your role</p> <p>24 in the distribution chain, correct?</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Well, I'll represent to you,</p> <p>2 you haven't said the word "public health"</p> <p>3 once when you've talked about what</p> <p>4 considerations come into</p> <p>5 AmerisourceBergen's factors when they're</p> <p>6 complying with the statutes.</p> <p>7 So I understand from that</p> <p>8 that public health is not one of those</p> <p>9 considerations. Is my understanding</p> <p>10 correct?</p> <p>11 MR. NICHOLAS: Objection.</p> <p>12 Object to the form of the</p> <p>13 question. You're just bullying</p> <p>14 the witness.</p> <p>15 THE WITNESS: Our role</p> <p>16 within the supply chain is from</p> <p>17 the manufacturer to</p> <p>18 the dispenser --</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. I'm not asking what your</p> <p>21 role is.</p> <p>22 MR. NICHOLAS: Don't</p> <p>23 interrupt him, please.</p> <p>24 THE WITNESS: We're not</p>	<p style="text-align: right;">Page 77</p> <p>1 MR. NICHOLAS: Object to the</p> <p>2 form of the question.</p> <p>3 THE WITNESS: I've answered</p> <p>4 the question several times. I</p> <p>5 think I've made it clear what our</p> <p>6 role is in the distribution --</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. I didn't ask you what your</p> <p>9 role is. That's not the question.</p> <p>10 You've got to answer the question.</p> <p>11 A. I did answer the question.</p> <p>12 Q. Do you consider public</p> <p>13 health when you're carrying out your</p> <p>14 duties under the statute, under The</p> <p>15 Controlled Substances Act?</p> <p>16 MR. NICHOLAS: Objection.</p> <p>17 I'm going to suggest that the</p> <p>18 witness does not have to answer</p> <p>19 this question for the millionth</p> <p>20 time.</p> <p>21 MR. PIFKO: He's not. This</p> <p>22 is a yes-or-no question.</p> <p>23 MR. NICHOLAS: No, it's not</p> <p>24 a yes-or-no question.</p>

Page 78	Page 80
<p>1 MR. PIFKO: It is.</p> <p>2 MR. NICHOLAS: He does not</p> <p>3 have to answer any question yes or</p> <p>4 no. He's answering the question</p> <p>5 the way he sees fit.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. Do you consider public</p> <p>8 health when you're carrying out your</p> <p>9 duties under The Controlled Substances</p> <p>10 Act?</p> <p>11 MR. NICHOLAS: Asked and</p> <p>12 answered. Same objections.</p> <p>13 THE WITNESS: I mean, I</p> <p>14 am --</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. It's a yes-or-no question.</p> <p>17 A. It's not a yes-or-no</p> <p>18 question.</p> <p>19 Q. It is.</p> <p>20 A. I've explained it to you,</p> <p>21 and we can go through it again, of where</p> <p>22 we fit in the supply channel.</p> <p>23 Q. I didn't ask where you fit</p> <p>24 in the supply channel.</p>	<p>1 question. We can -- I guess we can go</p> <p>2 back-and-forth here for a while, but we</p> <p>3 aren't -- we do not distribute to the</p> <p>4 public. We distribute --</p> <p>5 Q. I didn't ask you if you</p> <p>6 distribute to the public.</p> <p>7 A. I know. I'm explaining --</p> <p>8 MR. NICHOLAS: You're asking</p> <p>9 about public health. He's</p> <p>10 describing the public.</p> <p>11 THE WITNESS: I'm</p> <p>12 explaining -- we don't sell -- the</p> <p>13 public health -- we don't sell to</p> <p>14 the public. We sell to the</p> <p>15 pharmacies who dispense</p> <p>16 prescriptions written by doctors.</p> <p>17 And we buy from manufacturers.</p> <p>18 We aren't -- we do not</p> <p>19 distribute to the public health.</p> <p>20 And you're asking me a question --</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. I didn't ask you if you</p> <p>23 distribute to the public health.</p> <p>24 When you carry out your</p>
Page 79	Page 81
<p>1 A. I know, but --</p> <p>2 MR. PIFKO: We're going to</p> <p>3 call Cohen, because this is pure</p> <p>4 gamesmanship.</p> <p>5 You know, sir, I asked him,</p> <p>6 is public health a consideration</p> <p>7 in your compliance with the</p> <p>8 statute? And he won't answer.</p> <p>9 He's telling me what his duties</p> <p>10 are. I'm not asking. It's a</p> <p>11 yes-or-no question.</p> <p>12 MR. NICHOLAS: He's answered</p> <p>13 many, many times.</p> <p>14 MR. PIFKO: The court is not</p> <p>15 going to appreciate answers like</p> <p>16 this, okay? It's a</p> <p>17 plain-and-simple situation.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. I'm asking you, does public</p> <p>20 health play into your considerations when</p> <p>21 you're carrying out your duties under The</p> <p>22 Controlled Substances Act?</p> <p>23 It's a yes-or-no question.</p> <p>24 A. It's not a yes-or-no</p>	<p>1 duties to maintain effective controls,</p> <p>2 I'm asking if you consider the impact of</p> <p>3 them on public health when you carry out</p> <p>4 your duties?</p> <p>5 A. We consider the duties and</p> <p>6 we ensure that we follow those duties.</p> <p>7 And that's what we consider.</p> <p>8 However you want to phrase</p> <p>9 it, we can -- again, we can discuss this</p> <p>10 for however long you want to spend on</p> <p>11 this. But I think I'm being responsive</p> <p>12 to your question. I think I've explained</p> <p>13 it clearly. And it's not the answer you</p> <p>14 might want.</p> <p>15 But I'm just trying to --</p> <p>16 Q. But you're not answering --</p> <p>17 I don't care. You can say yes or no. I</p> <p>18 don't care what your answer is.</p> <p>19 You've just -- you've got to</p> <p>20 say whether public health is a</p> <p>21 consideration of the company when it's</p> <p>22 carrying out its duties under The</p> <p>23 Controlled Substances Act. That's all</p> <p>24 I'm asking you.</p>

<p style="text-align: right;">Page 82</p> <p>1 A. And I answered the question.</p> <p>2 Q. You didn't.</p> <p>3 A. I did answer the question.</p> <p>4 Q. You never once said that</p> <p>5 AmerisourceBergen considers public</p> <p>6 health --</p> <p>7 A. And I explained --</p> <p>8 Q. -- when carrying out its</p> <p>9 duties.</p> <p>10 A. I explained our process and</p> <p>11 I explained what we take into</p> <p>12 consideration, where we are within the</p> <p>13 supply chain.</p> <p>14 Q. And you agree that public</p> <p>15 health isn't one of those things?</p> <p>16 MR. NICHOLAS: That is not</p> <p>17 what he said. But you're just</p> <p>18 arguing. I mean, why are you</p> <p>19 arguing? Why don't you just ask</p> <p>20 him --</p> <p>21 MR. PIFKO: I'm trying to</p> <p>22 get your answer to the question.</p> <p>23 MR. NICHOLAS: You have a</p> <p>24 30(b)(6) notice with topics.</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. NICHOLAS: I agree time</p> <p>2 is being wasted by you.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. -- for clarity, the question</p> <p>5 being asked to you: In carrying out its</p> <p>6 duties to prevent diversion of Control II</p> <p>7 substances under the controlled schedules</p> <p>8 act -- under The Controlled Substances</p> <p>9 Act, does AmerisourceBergen consider the</p> <p>10 impact on the public health?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form. All my same objections.</p> <p>13 THE WITNESS: Again, we</p> <p>14 ensure that we have products that</p> <p>15 we distribute to the pharmacies</p> <p>16 that are made available to the</p> <p>17 pharmacies to be able to dispense</p> <p>18 to the public.</p> <p>19 I'm not sure -- you're</p> <p>20 asking me a question that I've</p> <p>21 answered several times, given</p> <p>22 where we fit in the supply</p> <p>23 channel, given our</p> <p>24 responsibilities. And as the head</p>
<p style="text-align: right;">Page 83</p> <p>1 MR. PIFKO: And he's burning</p> <p>2 the time. We've burned 20 minutes</p> <p>3 here.</p> <p>4 MR. NICHOLAS: You're</p> <p>5 burning the time. It's Topics A</p> <p>6 through N. You haven't started on</p> <p>7 a single topic. And you haven't</p> <p>8 asked him -- shown him a single</p> <p>9 document.</p> <p>10 So who is burning the time?</p> <p>11 MR. PIFKO: I'm going to ask</p> <p>12 the question one more time. And</p> <p>13 if I don't get an answer, we're</p> <p>14 going to go and we're going to</p> <p>15 call the court and we're going to</p> <p>16 discuss your evasive answers here.</p> <p>17 Because we're not going to be</p> <p>18 doing this all day. And this</p> <p>19 whole last 20 minutes does not</p> <p>20 count towards my time on this</p> <p>21 deposition, because you're just</p> <p>22 wasting everyone's time here.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. So again for clarity --</p>	<p style="text-align: right;">Page 85</p> <p>1 of that department, my job is --</p> <p>2 my -- what we consider is we</p> <p>3 consider that those products are</p> <p>4 handled appropriately and</p> <p>5 distributed in an appropriate</p> <p>6 manner to the licensed entities</p> <p>7 that we sell to.</p> <p>8 And, you know --</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. Is the impact --</p> <p>11 A. That's the answer.</p> <p>12 Q. -- on the public health one</p> <p>13 of those considerations?</p> <p>14 MR. NICHOLAS: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: The impact on</p> <p>17 the public health is -- is the</p> <p>18 whole supply channel.</p> <p>19 You're asking me a question</p> <p>20 that we don't interface with the</p> <p>21 public. You're asking me that --</p> <p>22 we interface with the pharmacy and</p> <p>23 the dispenser and we only have our</p> <p>24 obligations. And our</p>

<p style="text-align: right;">Page 86</p> <p>1 understanding and our part in the 2 supply channel is in that -- in 3 that realm. 4 We aren't in the realm of 5 the patient that's coming in or 6 the doctor writing the 7 prescription or what 8 considerations they take before 9 they write a prescription. We 10 aren't involved in any of that, 11 and nor should we be. 12 We're responsible for making 13 sure the product gets from the 14 manufacturer to the pharmacy. And 15 we have an obligation, if there's 16 a suspicious order, to report it. 17 We're not -- we don't have 18 an obligation to vet doctors and 19 understand patient/doctor 20 relationships and all these other 21 areas. That's not our role in the 22 supply chain. 23 BY MR. PIFKO: 24 Q. So you don't consider public</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I did. We consider -- 2 Q. Am I correct that 3 AmerisourceBergen does not consider the 4 public health when carrying out its 5 duties to prevent diversion under The 6 Controlled Substances Act? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: We consider 10 the -- we consider that pharmacies 11 have product accessible to fill 12 the patients' prescriptions. 13 However you want to interpret 14 that, that's up to you. 15 But that is -- the answer 16 is, our consideration is making 17 sure drugs are available. If that 18 means taking into consideration 19 the public safety -- or whatever 20 the -- what you're hammering on 21 here, what is the question? 22 BY MR. PIFKO: 23 Q. Public health. 24 A. Public health.</p>
<p style="text-align: right;">Page 87</p> <p>1 health when you're carrying out your role 2 in the supply chain; is that correct? 3 MR. NICHOLAS: Object to the 4 form of the question. You're 5 mischaracterizing -- 6 mischaracterizing testimony. 7 THE WITNESS: I think I've 8 answered the question. 9 BY MR. PIFKO: 10 Q. I asked you a question. 11 You don't consider public 12 health when you're carrying out your role 13 in the supply chain; is that correct? 14 MR. NICHOLAS: Object to the 15 form of the question. All the 16 same reasons. 17 THE WITNESS: I think I've 18 answered -- I've answered the 19 question. I mean -- 20 BY MR. PIFKO: 21 Q. Answer that question, 22 please. 23 A. I did answer that question. 24 Q. You have not.</p>	<p style="text-align: right;">Page 89</p> <p>1 We make sure we have 2 products available that are safe and 3 secure to supply to the pharmacies. If 4 that means that's considering public 5 health, then that's your interpretation. 6 But to say that we don't 7 have any -- that I haven't answered the 8 question, I don't think that's correct. 9 Q. How about, you're talking 10 about supplying a prescription, a valid 11 prescription. 12 How about, does 13 AmerisourceBergen consider the public 14 health when trying to prevent Control II 15 substances from getting into illegal 16 hands? 17 MR. NICHOLAS: Same 18 objection. 19 THE WITNESS: It's the same 20 question. It's the same answer as 21 the last question. 22 BY MR. PIFKO: 23 Q. What's your answer? 24 MR. NICHOLAS: Same</p>

<p style="text-align: right;">Page 90</p> <p>1 objection.</p> <p>2 THE WITNESS: We adhere to</p> <p>3 our regulatory requirements within</p> <p>4 the confines of a distributor.</p> <p>5 And whether that's the</p> <p>6 consideration of our</p> <p>7 requirements -- I mean, that's --</p> <p>8 that is our role. And that is</p> <p>9 what we consider.</p> <p>10 We want to make sure that we</p> <p>11 only buy from appropriate sources,</p> <p>12 store correctly, and we only sell</p> <p>13 to legitimate sources.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. We talked about how Schedule</p> <p>16 II substances have a high potential for</p> <p>17 abuse, correct?</p> <p>18 A. They are Schedule II drugs,</p> <p>19 yes.</p> <p>20 Q. And the statute says that</p> <p>21 Schedule II substances have a high</p> <p>22 potential for abuse, correct?</p> <p>23 A. That's why they're Schedule</p> <p>24 II, correct.</p>	<p style="text-align: right;">Page 92</p> <p>1 regulatory responsibilities of who</p> <p>2 we distribute products to.</p> <p>3 We can only control what we</p> <p>4 can control. We can only control</p> <p>5 who we sell drugs to. And we</p> <p>6 consider the impact to ensure that</p> <p>7 we only sell to licensed</p> <p>8 registrants. And that's the</p> <p>9 consideration we make and that's</p> <p>10 our obligation under the</p> <p>11 regulations.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Does AmerisourceBergen</p> <p>14 believe it has a responsibility to</p> <p>15 protect people in the communities it</p> <p>16 serves from falling victim to abuse of</p> <p>17 Schedule II substances?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form. It is not an appropriate</p> <p>20 question in this deposition. It's</p> <p>21 outside the scope of the 30(b)(6)</p> <p>22 notice.</p> <p>23 THE WITNESS:</p> <p>24 AmerisourceBergen has its</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Does AmerisourceBergen</p> <p>2 consider the impact on the communities it</p> <p>3 serves if these Schedule II substances</p> <p>4 get into the wrong hands?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form. Outside the scope of the</p> <p>7 30(b)(6) notice as well.</p> <p>8 THE WITNESS: Can you</p> <p>9 restate your question?</p> <p>10 MR. PIFKO: Can you read</p> <p>11 back the question, please?</p> <p>12 - - -</p> <p>13 (Whereupon, the court</p> <p>14 reporter read the following part</p> <p>15 of the record:</p> <p>16 "Question: Does</p> <p>17 AmerisourceBergen consider the</p> <p>18 impact on the communities it</p> <p>19 serves if these Schedule II</p> <p>20 substances get into the wrong</p> <p>21 hands?")</p> <p>22 - - -</p> <p>23 THE WITNESS: Again, we</p> <p>24 consider who -- we consider our</p>	<p style="text-align: right;">Page 93</p> <p>1 obligation to ensure that -- I</p> <p>2 mean, you're asking the same</p> <p>3 question, and the answer is the</p> <p>4 same.</p> <p>5 We have regulatory</p> <p>6 responsibilities that are imposed</p> <p>7 on the distributor that we must</p> <p>8 adhere to in order to prevent</p> <p>9 diversion, which we do diligently.</p> <p>10 And we ensure that the customers</p> <p>11 that we sell to are appropriately</p> <p>12 licensed and that -- while those</p> <p>13 drugs are under our control.</p> <p>14 That's what we take into</p> <p>15 consideration and that's what we</p> <p>16 do diligently.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. So does the company consider</p> <p>19 the adverse impacts of substances that it</p> <p>20 sells in the communities that it sells?</p> <p>21 A. Our duty is not to determine</p> <p>22 the types of the products. We only sell</p> <p>23 FDA-approved drugs. We don't approve the</p> <p>24 drugs. We don't schedule the drugs. We</p>

<p style="text-align: right;">Page 94</p> <p>1 don't put them into classifications. We 2 don't prescribe the drugs. And we don't 3 dispense the drugs. 4 All we do is make sure we 5 buy the drugs that are ordered from our 6 licensed customers, FDA and DEA-approved 7 drugs, and we distribute to them and make 8 sure that they have the appropriate 9 schedules. 10 We have nothing to do with 11 the approval of drugs. We have -- 12 nowhere in our scope do we have that 13 responsibility, nor should we. 14 MR. PIFKO: We're going to 15 take a break. 16 VIDEO TECHNICIAN: Going off 17 the record. The time is 10:20 18 a.m. 19 - - - 20 (Whereupon, a brief recess 21 was taken.) 22 - - - 23 VIDEO TECHNICIAN: We're 24 back on record. The time is 10:35</p>	<p style="text-align: right;">Page 96</p> <p>1 opioid products at issue in this 2 litigation can be dangerous? 3 MR. NICHOLAS: Object to the 4 form. 5 THE WITNESS: They're 6 Schedule -- by Schedule II, they 7 are -- that, by itself, identifies 8 them as such. 9 BY MR. PIFKO: 10 Q. And because they're highly 11 addictive, right? 12 MR. NICHOLAS: Object to the 13 form. This is outside the scope 14 of the 30(b)(6). 15 Are you now -- I do want to 16 start making it very clear on the 17 record when we're on -- in 18 30(b)(6) and when we're not. I 19 understand he's also testifying as 20 an individual. 21 Can we be clear that this 22 line of questioning, for example, 23 is outside the scope of the 24 30(b)(6) notice?</p>
<p style="text-align: right;">Page 95</p> <p>1 a.m. 2 BY MR. PIFKO: 3 Q. One little housekeeping 4 thing we forgot to talk about, although 5 I'm sure your counsel discussed it with 6 you before your -- when you were 7 preparing for the deposition. 8 But one of the rules of the 9 jurisdiction where we're in is that 10 you're not allowed to confer about the 11 substance of your testimony during our 12 breaks. 13 Do you understand that? 14 A. Yes. 15 Q. During the last break, did 16 you confer with your counsel about the 17 substance of your testimony? 18 A. No. 19 Q. Do we have an agreement that 20 going forward, you're not going to be 21 doing that during any break? 22 A. Yes. 23 Q. Okay. Great. 24 Do you understand that the</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. PIFKO: You can object 2 to scope, and we can fight about 3 it later. I don't think we're 4 going to agree on the record about 5 what's part of it or not. 6 MR. NICHOLAS: Well, okay. 7 Then I'll just have to keep saying 8 the objection all the time. 9 Object to the scope. 10 Would you mind if I ask 11 you -- 12 MR. PIFKO: Let's just ask 13 the question over again. 14 MR. NICHOLAS: -- can you 15 identify the section? 16 MR. PIFKO: I'm not going to 17 get into that right now. 18 BY MR. PIFKO: 19 Q. I'm going to ask you the 20 question again, sir, so we have a clear 21 record. 22 MR. NICHOLAS: Well, just 23 since we're making a clear record, 24 for the record, I would ask that</p>

<p style="text-align: right;">Page 98</p> <p>1 you identify, if you consider this</p> <p>2 to be within the 30(b)(6) notice,</p> <p>3 tell us which topic we're within.</p> <p>4 MR. PIFKO: Understood. We</p> <p>5 can meet and confer about that</p> <p>6 after the deposition.</p> <p>7 MR. NICHOLAS: After the</p> <p>8 deposition is too late. The</p> <p>9 deposition will be over. But,</p> <p>10 okay. I've made my request for</p> <p>11 the record.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. So sorry. Let's start over</p> <p>14 with that.</p> <p>15 You testified that the</p> <p>16 controlled substances at issue in this</p> <p>17 litigation, the opioid products, are --</p> <p>18 can be potentially dangerous because</p> <p>19 they're Schedule II and they are highly</p> <p>20 addictive, correct?</p> <p>21 MR. NICHOLAS: Object to the</p> <p>22 form.</p> <p>23 Go ahead.</p> <p>24 THE WITNESS: They are</p>	<p style="text-align: right;">Page 100</p> <p>1 is.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. We agree that they're</p> <p>4 Schedule II?</p> <p>5 A. Correct.</p> <p>6 Q. And we agree that a Schedule</p> <p>7 II product has been classified by the</p> <p>8 United States government as highly</p> <p>9 addictive, agreed?</p> <p>10 A. High potential of abuse. I</p> <p>11 don't know -- you're saying "addictive."</p> <p>12 I know the regulatory requirement is</p> <p>13 abuse.</p> <p>14 Q. Do you have an understanding</p> <p>15 that a product that has a high potential</p> <p>16 for abuse can be dangerous to people</p> <p>17 taking it?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form. Outside the scope of the</p> <p>20 notice.</p> <p>21 THE WITNESS: I'm not -- I'm</p> <p>22 not a medical doctor. I can't</p> <p>23 comment on that.</p> <p>24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 99</p> <p>1 Schedule II because there's a</p> <p>2 potential for abuse.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. And because there's a</p> <p>5 potential for abuse, that makes --</p> <p>6 there's a potential danger associated</p> <p>7 with them, correct?</p> <p>8 MR. NICHOLAS: Object to the</p> <p>9 form. Outside the scope of the</p> <p>10 30(b)(6).</p> <p>11 THE WITNESS: It's their</p> <p>12 potential for abuse that makes</p> <p>13 them a Schedule II and they have</p> <p>14 additional security requirements.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. So you don't have any</p> <p>17 understanding about -- beyond the fact</p> <p>18 that they're Schedule II, about what that</p> <p>19 means for these products?</p> <p>20 MR. NICHOLAS: Object to the</p> <p>21 form. Outside the scope of the</p> <p>22 30(b)(6).</p> <p>23 THE WITNESS: I'm not</p> <p>24 understanding what your question</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. So you have no</p> <p>2 understanding?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form. Outside the scope.</p> <p>5 THE WITNESS: I have no</p> <p>6 understanding of -- that they have</p> <p>7 a high abuse potential, yes, I do</p> <p>8 have an understanding of that. If</p> <p>9 that correlates to dangerous, I</p> <p>10 mean, if that's your correlation.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. I'm not making -- I'm just</p> <p>13 asking for your answer. You can give me</p> <p>14 whatever answer you'd like, as far as --</p> <p>15 as long as you answer the question.</p> <p>16 But my question just was, do</p> <p>17 you have an understanding that if --</p> <p>18 because the pills have a high potential</p> <p>19 for abuse, that they could cause</p> <p>20 potential danger to people?</p> <p>21 MR. NICHOLAS: Objection.</p> <p>22 Outside the scope.</p> <p>23 THE WITNESS: I don't know</p> <p>24 that for sure.</p>

<p style="text-align: right;">Page 102</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. Do you have an understanding</p> <p>3 that a drug that has a high potential for</p> <p>4 abuse could cause death to people who</p> <p>5 consume that drug?</p> <p>6 MR. NICHOLAS: Objection.</p> <p>7 Outside the scope.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 I don't know.</p> <p>10 I mean, drugs -- people can</p> <p>11 overdose on drugs, and I'm aware</p> <p>12 of that, yes.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Do you have an understanding</p> <p>15 that someone is more likely to suffer</p> <p>16 harm from a Schedule II drug than a drug</p> <p>17 that's not a Schedule II drug?</p> <p>18 MR. NICHOLAS: Objection.</p> <p>19 Outside the scope.</p> <p>20 THE WITNESS: I don't know</p> <p>21 that.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. Let's go back to our duties</p> <p>24 to prevent diversion.</p>	<p style="text-align: right;">Page 104</p> <p>1 Outside the scope.</p> <p>2 THE WITNESS: It calls for a</p> <p>3 conclusion. I don't know that.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. You don't know either way?</p> <p>6 A. I don't know --</p> <p>7 Q. If AmerisourceBergen does</p> <p>8 not maintain effective controls to</p> <p>9 prevent diversion of Schedule II</p> <p>10 substances, they can be diverted,</p> <p>11 correct?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form. Outside the scope.</p> <p>14 THE WITNESS: Again, if we</p> <p>15 don't adhere to our effective</p> <p>16 controls to prevent diversion,</p> <p>17 yes, diversion could occur.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. Let's discuss some of the</p> <p>20 company's policies and procedures with</p> <p>21 respect to diversion.</p> <p>22 Before we do that, do you</p> <p>23 agree that the laws and regulations with</p> <p>24 respect to preventing diversion remain --</p>
<p style="text-align: right;">Page 103</p> <p>1 You recall discussing that?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. You agree that</p> <p>7 AmerisourceBergen has a duty to prevent</p> <p>8 diversion of controlled -- I keep messing</p> <p>9 that up.</p> <p>10 You agree that</p> <p>11 AmerisourceBergen has a duty to prevent</p> <p>12 diversion of Schedule II substances?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form. I'm not sure it's within</p> <p>15 the scope either. But I</p> <p>16 definitely object to the form.</p> <p>17 THE WITNESS: We have a duty</p> <p>18 to -- we have an obligation to</p> <p>19 prevent diversion while the drugs</p> <p>20 are under our control.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. And if you don't carry out</p> <p>23 that duty, diversion can occur, correct?</p> <p>24 MR. NICHOLAS: Objection.</p>	<p style="text-align: right;">Page 105</p> <p>1 have remained unchanged for the last 45</p> <p>2 years?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form. Outside -- definitely</p> <p>5 outside the scope.</p> <p>6 THE WITNESS: The CSA was</p> <p>7 passed in 1970 and in -- the</p> <p>8 federal regulations that regulate</p> <p>9 our responsibilities have not</p> <p>10 changed.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. So it's your understanding</p> <p>13 that there haven't been changes with</p> <p>14 respect to the duties to prevent</p> <p>15 diversion since the passage of the</p> <p>16 statute?</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form. Outside the scope. You're</p> <p>19 asking him a legal question.</p> <p>20 THE WITNESS: The</p> <p>21 regulatory -- the regulations have</p> <p>22 not changed.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. So AmerisourceBergen has the</p>

<p style="text-align: right;">Page 106</p> <p>1 same duty under the regulations today as 2 it did in 1990, correct? 3 MR. NICHOLAS: Object to the 4 form. You're asking him a legal 5 question. Outside the scope. 6 THE WITNESS: We have a 7 requirement to have effective 8 controls to prevent diversion. 9 BY MR. PIFKO: 10 Q. And that requirement hasn't 11 changed since the passage of The 12 Controlled Substances Act, correct? 13 MR. NICHOLAS: Object to the 14 form. Calls for a legal 15 conclusion. Outside the scope. 16 THE WITNESS: I'm not aware 17 if the regulations have changed. 18 BY MR. PIFKO: 19 Q. You're familiar with the -- 20 AmerisourceBergen's practices and 21 procedures under The Controlled 22 Substances Act going back to the '80s, 23 correct? 24 A. The '90s.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Sorry, I'm not quite as 2 organized as I want to be. 3 From the time you started 4 with AmerisourceBergen -- let's back up. 5 You started working for 6 AmerisourceBergen in the 1990s? 7 A. January, correct. 8 Q. Do you remember the exact 9 date and year? 10 A. January 2nd, 1990. 11 Q. Okay. From the time that 12 you started with AmerisourceBergen until 13 about 1998, AmerisourceBergen's 14 monitoring protocol was that every order 15 that exceeded the threshold was deemed to 16 be suspicious, correct? 17 MR. NICHOLAS: Object to the 18 form. Outside the scope. 19 THE WITNESS: So when I 20 started with the company, the 21 process was a two-step process. 22 It was an excessive order report 23 that was produced monthly to send 24 to DEA, and then we also had a</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Okay. The '90s. 2 And you testified about the 3 company's practices with respect to 4 preventing diversion dating back to the 5 '90s in connection with the West Virginia 6 litigation, correct? 7 MR. NICHOLAS: Objection. 8 Outside the scope. 9 Go ahead. 10 THE WITNESS: I don't 11 remember, but -- 12 BY MR. PIFKO: 13 Q. You testified in 2006, 14 correct? 15 A. 2006? 16 Q. '16, sorry. 17 A. Yes. 18 Q. In preparing for this 19 deposition, did you review your 20 transcript of that proceeding? 21 A. I looked at it, yes. 22 Q. When was the last time you 23 looked at it? 24 A. A couple of weeks ago.</p>	<p style="text-align: right;">Page 109</p> <p>1 manual process at the distribution 2 centers where the order fillers 3 would identify suspicious orders 4 and report those. 5 BY MR. PIFKO: 6 Q. And the orders were reported 7 after they were shipped, correct? 8 MR. NICHOLAS: Object to the 9 form. Outside the scope. 10 THE WITNESS: Correct. 11 BY MR. PIFKO: 12 Q. Prior to 2007, 13 AmerisourceBergen's system shipped all 14 orders at night and reported any orders 15 that it deemed to be suspicious the next 16 day, correct? 17 MR. NICHOLAS: Objection. 18 Outside the scope. 19 THE WITNESS: That was the 20 program that we developed in 21 conjunction with DEA over a 22 two-year process, that we tested a 23 new -- a process of reporting 24 suspicious orders that we</p>

<p style="text-align: right;">Page 110</p> <p>1 developed with DEA and then worked 2 with them for two years testing 3 the program until they approved 4 the program in '98. 5 BY MR. PIFKO: 6 Q. I'm not asking for 7 approvals, or I didn't ask you the 8 formulation for the policy. I just asked 9 if that was a correct statement about 10 what the practice was. 11 So I'll just -- let's get a 12 clear answer to the question. 13 A. That was the practice that 14 we did in conjunction with DEA's 15 guidance. 16 Q. Just so we have a clear 17 record, the practice was to ship the 18 orders at night, and then the next day 19 any orders that were identified as 20 suspicious were then reported to the DEA; 21 is that correct? 22 A. Correct. 23 Q. Are you familiar with the 24 term "threshold"?</p>	<p style="text-align: right;">Page 112</p> <p>1 to identify an order of interest 2 for further review. 3 BY MR. PIFKO: 4 Q. And so the threshold is the 5 first step in the suspicious order 6 monitoring program, correct? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: It is a step. 10 BY MR. PIFKO: 11 Q. Is there a step before the 12 threshold? 13 A. We train our employees at 14 the distribution centers also to be aware 15 of, and train them on suspicious orders. 16 And if they identify a suspicious order, 17 they're to report it. 18 Q. The threshold is a key 19 factor that's used to identify 20 potentially suspicious orders, correct? 21 MR. NICHOLAS: Object to the 22 form. 23 THE WITNESS: It's an 24 identifier that we use</p>
<p style="text-align: right;">Page 111</p> <p>1 A. Yes. 2 Q. That's an attribute of your 3 suspicious order monitoring system, 4 correct? 5 MR. NICHOLAS: Object to the 6 form. 7 THE WITNESS: You need to 8 put it into context of time, 9 because the program has been 10 enhanced over the years. 11 BY MR. PIFKO: 12 Q. Well, for the time period 13 for which you're here to testify, which 14 ends in 2014, at all times there's been 15 some threshold requirement in the system, 16 correct? 17 A. Correct. 18 Q. Can you tell me what a 19 threshold is? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: A threshold is 23 the -- is a trigger that we have 24 put into the program to create --</p>	<p style="text-align: right;">Page 113</p> <p>1 systematically to trigger a 2 potential order of interest. 3 BY MR. PIFKO: 4 Q. What other identifiers does 5 AmerisourceBergen use to identify a 6 potential order of interest? 7 MR. NICHOLAS: What time 8 period? Are we in the same time 9 period? 10 Before you answer, I'd like 11 to know what -- 12 MR. PIFKO: That's a 13 fact-related objection. You can't 14 make that objection. You can 15 object vague, and that's all you 16 can say. 17 MR. NICHOLAS: I wasn't 18 objecting. I was asking you to 19 clarify the question. 20 MR. PIFKO: I'm asking the 21 witness a question. 22 THE WITNESS: Can you 23 restate the question, please? 24 MR. PIFKO: Now you've</p>

<p style="text-align: right;">Page 114</p> <p>1 tainted the record.</p> <p>2 MR. NICHOLAS: I didn't</p> <p>3 taint the record, I just wanted</p> <p>4 clarification.</p> <p>5 MR. PIFKO: You have, but --</p> <p>6 THE WITNESS: Just repeat</p> <p>7 the question. I'll answer you,</p> <p>8 just repeat the question.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. My question was --</p> <p>11 MR. PIFKO: Can you read</p> <p>12 back the question?</p> <p>13 - - -</p> <p>14 (Whereupon, the court</p> <p>15 reporter read the following part</p> <p>16 of the record:</p> <p>17 "Question: What other</p> <p>18 identifiers does AmerisourceBergen</p> <p>19 use to identify a potential order</p> <p>20 of interest?")</p> <p>21 - - -</p> <p>22 THE WITNESS: As I indicated</p> <p>23 prior, the manual process of we</p> <p>24 train our distribution center</p>	<p style="text-align: right;">Page 116</p> <p>1 line of questioning.</p> <p>2 MR. PIFKO: Again, that's a</p> <p>3 speaking objection, it's not</p> <p>4 appropriate.</p> <p>5 MR. NICHOLAS: It's not an</p> <p>6 objection. I'm asking for clarity</p> <p>7 so the record is clear.</p> <p>8 MR. PIFKO: The witness is</p> <p>9 answering my question, so we're</p> <p>10 having a conversation here. And</p> <p>11 you're interrupting.</p> <p>12 Please continue, sir.</p> <p>13 MR. NICHOLAS: I object to</p> <p>14 the lecture to me.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: And you</p> <p>17 mentioned that -- I think your</p> <p>18 question was cage or vault?</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. You used the word -- you</p> <p>21 used the word "vault" originally, you</p> <p>22 said something about the "cage" and then</p> <p>23 you said something about the "vault."</p> <p>24 And my question to you is,</p>
<p style="text-align: right;">Page 115</p> <p>1 employees that work in the cages</p> <p>2 and vaults, if they see an</p> <p>3 unusually large order or frequency</p> <p>4 or pattern that they feel could be</p> <p>5 potentially suspicious, then they</p> <p>6 are to report that, in addition</p> <p>7 to -- you asked if there was</p> <p>8 another. There it is, that's the</p> <p>9 other.</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. So employees who work in the</p> <p>12 cages look for an order of unusual size,</p> <p>13 frequency or deviation from the normal</p> <p>14 pattern?</p> <p>15 A. And the vault. We train</p> <p>16 them to look for that, correct.</p> <p>17 Q. When you say "and the</p> <p>18 vault" --</p> <p>19 MR. NICHOLAS: Object to the</p> <p>20 form.</p> <p>21 I will restate for the</p> <p>22 record that we need some clarity</p> <p>23 as to what time period we're</p> <p>24 talking about during this whole</p>	<p style="text-align: right;">Page 117</p> <p>1 what do you mean by "vault"?</p> <p>2 A. So Schedule II products are</p> <p>3 maintained in the vault. Schedule III</p> <p>4 through IVs are maintained in the cage.</p> <p>5 Both have a suspicious order reporting</p> <p>6 requirements, so we train those</p> <p>7 associates in both areas.</p> <p>8 Q. So there's -- associates in</p> <p>9 the cage are trained on, to report an</p> <p>10 order that deviates from the usual</p> <p>11 pattern or is of an unusual size or</p> <p>12 frequency, correct?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: Both cage and</p> <p>17 vault associates are trained in</p> <p>18 the same manner, to identify --</p> <p>19 yes, exactly.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. I was going to ask that. I</p> <p>22 was just making my written record here</p> <p>23 for that. So just, again, for clarity of</p> <p>24 the record.</p>

<p style="text-align: right;">Page 118</p> <p>1 The employees in the cage 2 can identify an order of interest by 3 identifying that order as being of an 4 unusual size, frequency or deviating from 5 the normal pattern? 6 MR. NICHOLAS: Object to the 7 form. 8 THE WITNESS: As I 9 indicated, they are trained, if 10 they identify something of such, 11 they are to report it. 12 BY MR. PIFKO: 13 Q. And the same is true with 14 respect to employees in the vault? 15 A. Correct. 16 MR. NICHOLAS: Object to the 17 form. 18 BY MR. PIFKO: 19 Q. And the other way an order 20 can be identified as an order of interest 21 is if it exceeds a threshold that's 22 defined by AmerisourceBergen? 23 MR. NICHOLAS: Object to the 24 form.</p>	<p style="text-align: right;">Page 120</p> <p>1 BY MR. PIFKO: 2 Q. Let's talk about the 3 pre-2007 period and thresholds within 4 that period. 5 Do you have an understanding 6 of how AmerisourceBergen calculated 7 thresholds before 2007? 8 MR. NICHOLAS: Objection. 9 Outside the scope. 10 These are being answered in 11 his individual capacity. 12 THE WITNESS: In what time 13 period? 14 BY MR. PIFKO: 15 Q. Well, let's start, you 16 testified in West Virginia that there 17 were certain changes made with respect to 18 the calculation of thresholds from the 19 1990s to 2007, correct? 20 MR. NICHOLAS: Same 21 objection. 22 THE WITNESS: There was a 23 change in '98. 24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 119</p> <p>1 THE WITNESS: There's a 2 threshold that identifies a 3 potentially -- an order of 4 interest, not a suspicious order. 5 And that is -- that is determined 6 by a threshold. 7 BY MR. PIFKO: 8 Q. Are there any other ways an 9 order can be identified as an order of 10 interest? 11 MR. NICHOLAS: Object to the 12 form. 13 I really would appreciate, 14 for the record, some clarity as to 15 the time frame that we're talking 16 about. 17 Are you still unwilling to 18 do that? It seems very -- it 19 seems very plain vanilla. 20 MR. PIFKO: We're talking 21 about the time period for which 22 you were designated, sir. 23 THE WITNESS: Not that I am 24 aware of.</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Okay. Before 1998, what was 2 the method of calculating a threshold at 3 AmerisourceBergen? 4 MR. NICHOLAS: Same 5 objection. Outside the scope of 6 the 30(b)(6). 7 THE WITNESS: The method of 8 calculating the threshold prior to 9 that was that you would -- all 10 pharmacies would be in one 11 category, hospitals would be in 12 another category. You take all 13 the pharmacies within that 14 category and divide by the number 15 of pharmacies to come up with an 16 average volume for the month per 17 drug category. And then there was 18 a multiplier of three. Any order 19 that was over the threshold amount 20 would be produced an excessive 21 order report. 22 BY MR. PIFKO: 23 Q. But it would still be 24 shipped?</p>

<p style="text-align: right;">Page 122</p> <p>1 A. The product?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. After 1998, what was the</p> <p>5 practice with respect to calculating</p> <p>6 thresholds?</p> <p>7 MR. NICHOLAS: Same</p> <p>8 objection. Outside the scope.</p> <p>9 THE WITNESS: So in 1996, we</p> <p>10 worked with DEA, for two years,</p> <p>11 on -- in order to provide DEA with</p> <p>12 more -- we feel, more accurate</p> <p>13 information, that we worked on a</p> <p>14 project to where we would identify</p> <p>15 a customer based upon its own</p> <p>16 purchase history versus all</p> <p>17 pharmacies in one big bucket.</p> <p>18 And then we calculated a</p> <p>19 rolling four-month average of that</p> <p>20 pharmacy's purchases. And then</p> <p>21 created a multiplier of three to</p> <p>22 identify a trigger that would</p> <p>23 identify a suspicious order.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 124</p> <p>1 that two-year period.</p> <p>2 We continued to make changes</p> <p>3 in the program, and that was the final</p> <p>4 calculation that we came up with.</p> <p>5 Q. And that calculation was</p> <p>6 used from 1998 to 2007?</p> <p>7 A. Yes.</p> <p>8 Q. Something happened in 2007,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. You had an enforcement</p> <p>12 action brought against you by the DEA,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. The three times multiplier,</p> <p>16 where does that come from? Scratch that</p> <p>17 question for a second.</p> <p>18 You agree that throughout</p> <p>19 the time period we just discussed, from</p> <p>20 the 1990s to 2007, there was always a</p> <p>21 three times multiplier used in connection</p> <p>22 with calculating the threshold, correct?</p> <p>23 A. So for -- so from 1990 to</p> <p>24 '98, the excessive report for ARCOS</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. That practice was in place</p> <p>2 from 1998 to when?</p> <p>3 MR. NICHOLAS: Object to</p> <p>4 the -- objection. Scope. Same</p> <p>5 objection as I've been stating.</p> <p>6 THE WITNESS: So that -- so</p> <p>7 once we got approval from DEA to</p> <p>8 enact that program nationally, we</p> <p>9 tested it for -- with one DEA</p> <p>10 office and then several, and then</p> <p>11 Washington, D.C. approved it for</p> <p>12 national use throughout in 1998.</p> <p>13 And that was the practice</p> <p>14 until 2007.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. So to be clear, from 2007 --</p> <p>17 I'm sorry, from 1998 to 2007, the</p> <p>18 practice was to take a specific</p> <p>19 customer's order history over the prior</p> <p>20 four-month period and then average the</p> <p>21 order history and multiply that by three,</p> <p>22 and that would be its threshold, correct?</p> <p>23 A. That was the agreed-upon</p> <p>24 process through our testing with DEA over</p>	<p style="text-align: right;">Page 125</p> <p>1 items, which would be your Schedule II</p> <p>2 and reportable IIIs had a three times</p> <p>3 multiplier. Non-ARCOS items, I think it</p> <p>4 might have been six; it might have been a</p> <p>5 higher multiplier.</p> <p>6 Our program that we</p> <p>7 implemented in '98 set them all at three.</p> <p>8 Q. And do you know what the</p> <p>9 methodology was in calculating that three</p> <p>10 times multiplier?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form. And same objection, as to</p> <p>13 outside -- as to the scope here of</p> <p>14 all these questions.</p> <p>15 THE WITNESS: So the three</p> <p>16 times multiplier had been in place</p> <p>17 when I came on board in 1990. And</p> <p>18 that was the program that we were</p> <p>19 submitting and working with DEA in</p> <p>20 1990 all the way up to '96.</p> <p>21 And then when we started to</p> <p>22 work on the new program in</p> <p>23 conjunction with DEA and testing</p> <p>24 it and refining it for that</p>

<p style="text-align: right;">Page 126</p> <p>1 two-year period, the three times 2 multiplier was the multiplier that 3 we -- that, in conjunction with 4 the DEA, decided to use. 5 BY MR. PIFKO: 6 Q. So you don't know where it 7 came from, because it was already in 8 place when you started at the company? 9 MR. NICHOLAS: Object to the 10 form. Outside the scope. 11 THE WITNESS: It was -- 12 correct, it was in place. 13 And then in '96, '7, '8, 14 right in that time period, the 15 Methamphetamine Control Act was 16 passed. And part of that act 17 required the -- it didn't require, 18 it mandated a Suspicious Order 19 Task Force to come up with a 20 process to identify suspicious 21 orders and report it to DEA. 22 I participated on that task 23 force, and that was what came up. 24 And it was with enforcement,</p>	<p style="text-align: right;">Page 128</p> <p>1 And then in '96, when we 2 started working with DEA, we came 3 up and we mutually decided on a 4 three times multiplier. 5 And then the Suspicious 6 Order Task Force was assembled 7 and, again, through their meetings 8 with enforcement agencies and 9 regulators and industry, they came 10 up with a process to identify 11 systematic -- a systematic 12 approach for reporting suspicious 13 orders, and that was a three times 14 multiplier as well. 15 BY MR. PIFKO: 16 Q. This three times multiplier 17 that you relied on through this task 18 force, was there any written 19 documentation establishing that? 20 A. It was in the chemical 21 handling handbook published by the DEA. 22 Q. And that's a document that 23 you relied on for the three times 24 multiplier?</p>
<p style="text-align: right;">Page 127</p> <p>1 state, federal and industry. And 2 we met quarterly. And the 3 Suspicious Order Task Force 4 mandated by the Methamphetamine 5 Control Act came up with the same 6 process with the three times 7 multiplier. And that's the same 8 one we used, which kind of is in 9 line with what we used in '90, 10 what we used in '98, and what we 11 implemented in 2007. 12 BY MR. PIFKO: 13 Q. And so your three times 14 multiplier came from being involved with 15 the task force on -- what did you say? 16 The Methamphetamine Act? 17 A. The three time -- 18 MR. NICHOLAS: Object to the 19 form. Scope. 20 Go ahead. 21 THE WITNESS: So the three 22 times multiplier was already in 23 place in 1990, and those were the 24 reports we were submitting to DEA.</p>	<p style="text-align: right;">Page 129</p> <p>1 A. That was -- 2 MR. NICHOLAS: Same 3 objection. Objections to the form 4 and outside the scope. 5 Go ahead. 6 THE WITNESS: Again, what 7 time frame are you talking about? 8 When we worked with DEA, we 9 relied on our negotiations with 10 DEA. And then in 2007, when we 11 were implementing a new enhanced 12 program, again, in conjunction 13 with DEA, we came up with the 14 three times multiplier. Referring 15 back to the handling manual that 16 was published by DEA, has -- 17 identifying a suspicious order 18 systematically, it was three times 19 multiplier. 20 BY MR. PIFKO: 21 Q. So what I'm asking you is, 22 the three times multiplier that you're 23 relying on with respect to the handling 24 manual that was published by DEA,</p>

<p style="text-align: right;">Page 130</p> <p>1 that's -- what that's called?</p> <p>2 A. Your question is what the</p> <p>3 manual is called? Chemical handling</p> <p>4 guide, I believe. I can't -- I don't</p> <p>5 know the exact name. It was also on the</p> <p>6 DEA's website for some time.</p> <p>7 Q. Did you produce a copy of</p> <p>8 that guide, to your knowledge?</p> <p>9 MR. NICHOLAS: Who are you</p> <p>10 talking about? Are you talking</p> <p>11 about --</p> <p>12 MR. PIFKO: The company.</p> <p>13 MR. NICHOLAS: -- in this</p> <p>14 litigation?</p> <p>15 MR. PIFKO: Yes.</p> <p>16 THE WITNESS: In this --</p> <p>17 MR. NICHOLAS: Objection.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. If you know.</p> <p>20 A. I don't know.</p> <p>21 MR. NICHOLAS: For the</p> <p>22 record, since the implication is</p> <p>23 that maybe we were supposed to</p> <p>24 produce the document or</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. I'll represent to you that</p> <p>2 this is the 2001 version.</p> <p>3 A. Okay.</p> <p>4 Q. Do you believe you've seen</p> <p>5 this before?</p> <p>6 A. I've seen -- I don't know if</p> <p>7 I've seen this version, but I've seen it.</p> <p>8 Q. And when you refer to the</p> <p>9 Chemical Handler's Manual, this is what</p> <p>10 you're referring to?</p> <p>11 A. Yes. And, again, it was</p> <p>12 also on the website as well.</p> <p>13 Q. When you talk about the</p> <p>14 three times multiplier -- there's page</p> <p>15 numbers on the bottom here, Page 43.</p> <p>16 They are side-by-side columns, Appendix</p> <p>17 E-3.</p> <p>18 Can you turn to that?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Are you there?</p> <p>21 A. Yes.</p> <p>22 Q. On Page 43, the page on the</p> <p>23 right, you see there it says, Suspicious</p> <p>24 order reporting system for use in</p>
<p style="text-align: right;">Page 131</p> <p>1 something --</p> <p>2 MR. PIFKO: No accusations.</p> <p>3 Just asking.</p> <p>4 MR. NICHOLAS: Good. It's a</p> <p>5 DEA document prior to 2006.</p> <p>6 - - -</p> <p>7 (Whereupon, Amerisource</p> <p>8 Bergen-Zimmerman Exhibit-4, 2001</p> <p>9 Chemical Handler's Notebook, was</p> <p>10 marked for identification.)</p> <p>11 - - -</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. I'm handing you what's</p> <p>14 marked as Exhibit-4.</p> <p>15 A. Thank you.</p> <p>16 Q. Do you have Exhibit-4 in</p> <p>17 front of you?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Are you reviewing Exhibit-4?</p> <p>20 A. Yes.</p> <p>21 Q. Have you seen this document</p> <p>22 before?</p> <p>23 A. I've seen a version of it.</p> <p>24 I'm not sure what version this is.</p>	<p style="text-align: right;">Page 133</p> <p>1 automated tracking systems.</p> <p>2 Do you see that?</p> <p>3 A. What page are you on?</p> <p>4 Q. It's 43 on the very bottom.</p> <p>5 A. Okay.</p> <p>6 Q. Are you there?</p> <p>7 A. Yes.</p> <p>8 Q. Appendix E-3.</p> <p>9 Do you see that at the top</p> <p>10 of that page? Is that the page you're</p> <p>11 looking at?</p> <p>12 A. Yes.</p> <p>13 Q. And it says, Suspicious</p> <p>14 order reporting system for use in</p> <p>15 automated tracking systems.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Is this where the</p> <p>19 three times multiplier that you were</p> <p>20 talking about comes from?</p> <p>21 A. This is -- yeah, the basis</p> <p>22 of it.</p> <p>23 Q. And it says there -- there's</p> <p>24 terms and definitions and then it's got</p>

Page 134

1 these numbers, 1, 2, 3, 4. And then it
2 has, Note.
3 Do you see that?
4 A. Yes.
5 Q. And it says, Factor equals
6 3.
7 Do you see that?
8 A. Yes.
9 Q. Is that what you were
10 talking about?
11 A. Yes.
12 Q. And you worked with the task
13 force that was responsible for coming up
14 with this manual?
15 A. I participated on it. I
16 wasn't the -- the industry could have one
17 member, but there was a group of people
18 within the industry.
19 Q. Did you help in drafting any
20 of the language that was in the manual?
21 A. I don't recall.
22 Q. Do you recall if the DEA
23 asked you for comment on the final
24 version of the manual?

Page 135

1 A. I don't.
2 Q. Your work on this task force
3 was through the Healthcare Distribution
4 Alliance, which I guess was under a
5 different name at that time?
6 A. They had the -- yeah, there
7 was -- I think there was one member, one
8 slot on the task force for the
9 wholesaler. It was through the HDMA at
10 the time, I believe it was called.
11 Q. And so the DEA said that the
12 HDMA could have a member participate on
13 the task force, and you were the selected
14 member; is that correct?
15 A. No.
16 MR. NICHOLAS: Objection to
17 the form.
18 Go ahead.
19 THE WITNESS: No. No, I was
20 not. I said I participated. The
21 group --
22 BY MR. PIFKO:
23 Q. There was someone else who
24 was the HDMA member?

Page 136

1 A. There was a designee of one
2 person. It wasn't me. I wasn't the
3 one-person designee.
4 Q. Do you know who that was?
5 A. I don't.
6 Q. Do you know what company
7 they worked for?
8 A. I want to say it was
9 Cardinal or McKesson, but I'm not sure.
10 It wasn't ABC.
11 Q. Did you work with anyone
12 from Cardinal or McKesson -- so I asked
13 you who the designated person was, and
14 you said maybe it was Cardinal or
15 McKesson.
16 Setting aside who the
17 designated person was, when you were
18 involved with this task force, did you
19 work with anyone from McKesson or
20 Cardinal on the task force?
21 MR. NICHOLAS: Object to the
22 form. Scope.
23 Go ahead.
24 THE WITNESS: I can't

Page 137

1 remember who specifically was
2 involved.
3 BY MR. PIFKO:
4 Q. But you generally feel like
5 maybe McKesson or Cardinal was involved?
6 MR. NICHOLAS: Object to the
7 form.
8 THE WITNESS: Again, I don't
9 know exactly who was involved. I
10 wouldn't be comfortable saying who
11 exactly that would be.
12 BY MR. PIFKO:
13 Q. In 2007, there was a DEA
14 enforcement action against
15 AmerisourceBergen, correct?
16 A. Yes.
17 - - -
18 (Whereupon, Amerisource
19 Bergen-Zimmerman Exhibit-5,
20 ABDCMDL 00279854-54, was marked
21 for identification.)
22 - - -
23 BY MR. PIFKO:
24 Q. I'm handing you what is

<p style="text-align: right;">Page 138</p> <p>1 marked as Exhibit-5. This is a document 2 Bates labeled ABDCMDL 00279854 to 65. 3 Have you seen this document 4 before? 5 A. Yes. 6 Q. Can you tell me what this 7 is? 8 A. This is our settlement and 9 release agreement with the DEA for 10 Orlando distribution center. 11 Q. So as a result of the 12 enforcement action with the DEA, this was 13 the agreement that was reached between 14 AmerisourceBergen and the DEA, correct? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: This is the 18 agreement, yes, that was made 19 after the order to show cause. 20 BY MR. PIFKO: 21 Q. Was there any money paid, 22 under this agreement, from 23 AmerisourceBergen to the United States 24 government?</p>	<p style="text-align: right;">Page 140</p> <p>1 And they also wanted us to 2 modify our suspicious order 3 monitoring program to stop orders 4 that we believed -- stop orders 5 that could possibly be suspicious 6 and then to any suspicious -- any 7 order we deem suspicious should 8 not be shipped. 9 BY MR. PIFKO: 10 Q. Did AmerisourceBergen agree 11 to do that? 12 A. We modified our program per 13 this agreement, correct. 14 Q. Can we refer to this 15 agreement as the shipping requirement? 16 MR. NICHOLAS: Object to the 17 form. 18 BY MR. PIFKO: 19 Q. If I say "shipping 20 requirement," can we have an 21 understanding that I'm referring to the 22 idea that you're not supposed to ship an 23 order that's deemed to be suspicious? 24 MR. NICHOLAS: I'll object</p>
<p style="text-align: right;">Page 139</p> <p>1 A. No. 2 Q. But as a result of this 3 agreement, AmerisourceBergen changed its 4 suspicious order monitoring program, 5 correct? 6 MR. NICHOLAS: Object to the 7 form. 8 Go ahead. 9 THE WITNESS: It modified 10 the existing program, yes. 11 BY MR. PIFKO: 12 Q. Can you tell me how the 13 agreement modified the existing program? 14 MR. NICHOLAS: Object to the 15 form. 16 THE WITNESS: So through 17 negotiations with DEA and in 18 enhancing our existing order 19 monitoring program that we had in 20 place at the time, DEA wanted us 21 to include a more in-depth due 22 diligence process in addition to 23 ensuring that we only distribute 24 products to licensed individuals.</p>	<p style="text-align: right;">Page 141</p> <p>1 to the form. 2 I want to understand, are 3 you asking the witness if 4 heretofore we can refer to this 5 agreement as the shipping 6 requirement? Because if so, I'd 7 object to that. 8 BY MR. PIFKO: 9 Q. Do you understand the 10 question? 11 A. Do you want to repeat it? 12 Q. All I'm asking is if, for 13 ease of reference, going forward, we can 14 refer to the idea that you don't ship an 15 order that's been identified as 16 suspicious as the shipping requirement? 17 MR. NICHOLAS: I'll object 18 to the form. And the language. 19 THE WITNESS: We never -- 20 the shipping requirement was never 21 discussed in this document and is 22 not a term that we had used in 23 presentations or requirements. 24 We chose, through our work</p>

<p style="text-align: right;">Page 142</p> <p>1 with the DEA, that if we 2 defined -- ABC defined an order as 3 suspicious, that we would report 4 it and would not ship it. 5 BY MR. PIFKO: 6 Q. Did DEA ever tell you that 7 there was a -- prior to entering into 8 this agreement, did DEA ever tell you 9 that an order that's suspicious should 10 not be shipped? 11 MR. NICHOLAS: Object to the 12 form. 13 THE WITNESS: Did DEA ever 14 tell us? No. 15 BY MR. PIFKO: 16 Q. We talked about this 17 Chemical Handler's Manual and how it 18 provided guidance on the three times 19 threshold requirement, correct? 20 A. Yes. 21 Q. Did you take any guidance 22 from that manual about the idea of not 23 shipping an order that's deemed to be 24 suspicious?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. That's good. Thank you. 2 A. Do you want me to read the 3 whole thing? 4 Q. That's all I was asking you 5 to read. 6 MR. NICHOLAS: You asked him 7 to read the whole thing. 8 MR. PIFKO: You can read to 9 yourself the rest of that 10 paragraph, if you please. But all 11 I wanted you to read for the 12 record was that portion. 13 MR. NICHOLAS: You asked 14 him, for the record, to read the 15 whole paragraph. Are you now 16 telling him you don't want him to 17 read the whole paragraph? 18 MR. PIFKO: You don't need 19 to read any more. 20 BY MR. PIFKO: 21 Q. Did you ever consider 22 foregoing some transactions, as a result 23 of reading this document? 24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 143</p> <p>1 MR. NICHOLAS: Object to the 2 form. Outside the scope. 3 THE WITNESS: No. 4 BY MR. PIFKO: 5 Q. Let's take a look at that 6 manual again. I'd like to direct your 7 attention to Page 21 of that document. 8 Exhibit-4, for the record. 9 Looking at the second full 10 paragraph of Page 21, can you read that 11 to me? 12 A. On Page 21? You want me to 13 read it out loud? 14 Q. Yes, please. 15 A. When a regulated person 16 suspects that an order may be intended 17 for illicit purposes, good practice 18 requires that every reasonable effort be 19 made to resolve those suspicions. In 20 addition to making the required reports, 21 the transaction should not be completed 22 until the customer is able to eliminate 23 the suspicions. The distributor may have 24 to forego some transactions.</p>	<p style="text-align: right;">Page 145</p> <p>1 form. Outside the scope. 2 THE WITNESS: No. 3 - - - 4 (Whereupon, Amerisource 5 Bergen-Zimmerman Exhibit-6, 6 ABDCMDL 00269683-694, was marked 7 for identification.) 8 - - - 9 BY MR. PIFKO: 10 Q. I'm handing you what has 11 been marked as Exhibit-6. For the 12 record, these are a series of letters 13 from the Department of Justice, Bates 14 labeled ABDCMDL 00269683 to 694. 15 For the record, there's four 16 letters in this packet. This is how they 17 were produced. They are dated -- the one 18 in the back is the earliest, it's on Page 19 ABDCMDL 00269691, and it's dated 20 September 27th, 2006. And there's 21 another one dated February 7th, 2007; 22 another one dated December 27th, 2007; 23 and another one with a stamp on it, June 24 12th, 2012.</p>

<p style="text-align: right;">Page 146</p> <p>1 Have you seen these before?</p> <p>2 A. I have.</p> <p>3 Q. These are what we refer to</p> <p>4 as the Dear Registrant letters.</p> <p>5 Have you heard that term</p> <p>6 before?</p> <p>7 A. I have, since -- yep. Yes.</p> <p>8 Q. Did AmerisourceBergen</p> <p>9 receive these letters from the Department</p> <p>10 of Justice? Let's start with the first</p> <p>11 one, dated September 27th, 2006, Bates</p> <p>12 label ABDCMDL 00269691.</p> <p>13 Are you there?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Did AmerisourceBergen</p> <p>16 receive a copy of this letter?</p> <p>17 A. I believe one or more of our</p> <p>18 distribution centers did.</p> <p>19 Q. When you were at the</p> <p>20 company, at that time, did you receive a</p> <p>21 copy of that letter?</p> <p>22 A. I eventually saw a copy of</p> <p>23 the letter. I never received one from</p> <p>24 DEA.</p>	<p style="text-align: right;">Page 148</p> <p>1 just review the letter before you</p> <p>2 ask -- before he's asked questions</p> <p>3 about portions of it?</p> <p>4 MR. PIFKO: You can review</p> <p>5 the letter.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. Do you believe this a --</p> <p>8 while you're reviewing it, do you believe</p> <p>9 this is a true and correct copy of the</p> <p>10 September 27th, 2006 letter from the</p> <p>11 Department of Justice?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: It looks the</p> <p>15 same.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. And this is something that</p> <p>18 the company would have maintained in its</p> <p>19 files in the ordinary course of business?</p> <p>20 MR. NICHOLAS: Could you let</p> <p>21 him finish reading the letter,</p> <p>22 please, before you ask?</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. I just wanted to ask you</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. But someone in the company</p> <p>2 provided one to you?</p> <p>3 A. Yes.</p> <p>4 Q. And it was on or around the</p> <p>5 time of the letter?</p> <p>6 A. It was some time after. I</p> <p>7 don't recollect how far after.</p> <p>8 Q. Like a month after, or less?</p> <p>9 A. It could have been a month</p> <p>10 or two.</p> <p>11 Q. But not, like, a year later?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: Not that I</p> <p>15 recollect.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. I want to point you to some</p> <p>18 provisions in this letter. There's a</p> <p>19 heading, Background.</p> <p>20 Do you see that?</p> <p>21 A. What page are you on?</p> <p>22 Q. On ABDC 00269691.</p> <p>23 MR. NICHOLAS: Could the</p> <p>24 witness have the opportunity to</p>	<p style="text-align: right;">Page 149</p> <p>1 about a couple of provisions in the</p> <p>2 letter.</p> <p>3 A. Just one second.</p> <p>4 Okay.</p> <p>5 Q. My last question was, is</p> <p>6 this letter something that would have</p> <p>7 been maintained by the company in the</p> <p>8 ordinary course of business?</p> <p>9 A. We would have it.</p> <p>10 Q. So let's go to the first</p> <p>11 page of this letter which, again, for the</p> <p>12 record, is ABDCMDL 00269691.</p> <p>13 Are you there?</p> <p>14 A. Page 1, yes.</p> <p>15 Q. Okay. There's a heading</p> <p>16 here, Background.</p> <p>17 Do you see that?</p> <p>18 A. Oh, yes. At the top. Yes.</p> <p>19 Q. It says, As each of you is</p> <p>20 undoubtedly aware, the abuse (nonmedical</p> <p>21 use) of controlled prescription drugs is</p> <p>22 a serious and growing health problem in</p> <p>23 this country.</p> <p>24 Do you see that?</p>

Page 150	Page 152
<p>1 A. Yes.</p> <p>2 Q. Do you agree that the DEA</p> <p>3 communicated that to AmerisourceBergen on</p> <p>4 September 27th, 2006?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: So it states.</p> <p>8 It's stated in the letter.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. And you agree that the</p> <p>11 Department of Justice communicated that</p> <p>12 to AmerisourceBergen?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: We received</p> <p>16 this letter, yes.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. The letter also says, The</p> <p>19 CSA was designed by Congress to combat</p> <p>20 diversion by providing for a closed</p> <p>21 system of drug distribution in which all</p> <p>22 legitimate handlers of controlled</p> <p>23 substances must obtain a DEA</p> <p>24 registration, and as a condition of</p>	<p>1 Q. It then says, If the closed</p> <p>2 system is to function properly as</p> <p>3 Congress envisioned, distributors must be</p> <p>4 vigilant in deciding whether a</p> <p>5 prospective customer can be trusted to</p> <p>6 deliver controlled substances only for</p> <p>7 lawful purposes.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you agree with that</p> <p>11 statement?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: I think -- I</p> <p>15 think there's a lot of inference</p> <p>16 there.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. In what way?</p> <p>19 A. Congress -- he's indicating</p> <p>20 what Congress envisioned. I'm not sure</p> <p>21 what they're basing -- I'm not sure where</p> <p>22 they're drawing that from.</p> <p>23 Q. So you don't agree with that</p> <p>24 statement?</p>
Page 151	Page 153
<p>1 maintaining such registration, must take</p> <p>2 reasonable steps to ensure that their</p> <p>3 registration is not being utilized as a</p> <p>4 source of diversion.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you agree with that</p> <p>8 statement?</p> <p>9 MR. NICHOLAS: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: We have a</p> <p>12 responsibility to make sure we</p> <p>13 have adequate controls to prevent</p> <p>14 diversion, yes.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. And so you agree with the</p> <p>17 characterization here in this letter?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form. The letter is the letter.</p> <p>20 THE WITNESS: I agree that</p> <p>21 we must adhere to our regulatory</p> <p>22 requirements under the Code of</p> <p>23 Federal Regulations.</p> <p>24 BY MR. PIFKO:</p>	<p>1 MR. NICHOLAS: That's not</p> <p>2 what he said. Objection.</p> <p>3 THE WITNESS: I'm just</p> <p>4 stating that there's a statement</p> <p>5 made in there that Congress</p> <p>6 envisioned what the scope was.</p> <p>7 And I'm not sure what</p> <p>8 they're basing that upon. If I</p> <p>9 could see some documentation of</p> <p>10 what Congress indicated as the --</p> <p>11 you know, of our duty of</p> <p>12 vigilant -- deciding whether a</p> <p>13 customer can be trusted to</p> <p>14 deliver, that's what they</p> <p>15 envision, I'd like to know in what</p> <p>16 context.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. I'm just asking if -- I'm</p> <p>19 not asking you what DEA meant.</p> <p>20 I'm asking, based on your</p> <p>21 understanding of what that sentence</p> <p>22 means, do you agree with it?</p> <p>23 A. I don't know --</p> <p>24 MR. NICHOLAS: Object to the</p>

<p style="text-align: right;">Page 154</p> <p>1 form.</p> <p>2 THE WITNESS: I don't know</p> <p>3 what they envisioned. I don't</p> <p>4 know what they're basing that on.</p> <p>5 You're asking me to make a</p> <p>6 conclusion off of something I</p> <p>7 don't have all the facts about.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. So you don't have an</p> <p>10 understanding either way about whether</p> <p>11 distributors must be vigilant in deciding</p> <p>12 whether a prospective customer can be</p> <p>13 trusted to deliver controlled substances</p> <p>14 only for lawful purposes?</p> <p>15 A. We need --</p> <p>16 MR. NICHOLAS: Object to the</p> <p>17 form.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: We need to</p> <p>20 ensure that the customers that we</p> <p>21 sell to have been appropriately</p> <p>22 licensed and in good standing with</p> <p>23 DEA and the Boards of Pharmacy. I</p> <p>24 agree with that.</p>	<p style="text-align: right;">Page 156</p> <p>1 on the health and general welfare of the</p> <p>2 American people?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: Can you just</p> <p>6 restate that?</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. I said, do you have an</p> <p>9 understanding that in attempting to</p> <p>10 prevent illegal distribution of</p> <p>11 controlled substances, that the company's</p> <p>12 actions can have an impact on the health</p> <p>13 and general welfare of the American</p> <p>14 people?</p> <p>15 MR. NICHOLAS: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: Yeah, I -- can</p> <p>18 you break it into two or three</p> <p>19 questions? Because you lumped a</p> <p>20 lot in there. Can you --</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. What part is tricking you</p> <p>23 up?</p> <p>24 A. The first part.</p>
<p style="text-align: right;">Page 155</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. It says, Congress has</p> <p>3 expressly declared that the illegal</p> <p>4 distribution of controlled substances has</p> <p>5 a substantial and detrimental effect on</p> <p>6 the health and general welfare of the</p> <p>7 American people.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you agree with that</p> <p>11 statement?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. It's cites 21 USC.8012.</p> <p>16 A. If Congress has expressly</p> <p>17 declared that, then I agree that Congress</p> <p>18 expressly declared that there's a</p> <p>19 substantial and detrimental effect to the</p> <p>20 American wellbeing.</p> <p>21 Q. Do you have an understanding</p> <p>22 that in attempting to prevent illegal</p> <p>23 distribution of controlled substances,</p> <p>24 the company's actions can have an impact</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. We agree that</p> <p>2 AmerisourceBergen has a duty to take</p> <p>3 actions to prevent illegal distribution</p> <p>4 of controlled substances, agree?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: We have a duty</p> <p>8 to make sure that we follow our</p> <p>9 regulatory responsibilities to</p> <p>10 prevent diversion, I agree.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. And then the question is, in</p> <p>13 carrying out that role, do you believe</p> <p>14 that AmerisourceBergen's actions can have</p> <p>15 an impact on the health and general</p> <p>16 welfare of the American people?</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form.</p> <p>19 THE WITNESS: Again, we go</p> <p>20 back to what we were talking about</p> <p>21 before, is that, yes, we have to</p> <p>22 follow our policy and procedure to</p> <p>23 ensure that we have effective</p> <p>24 controls to prevent diversion.</p>

<p style="text-align: right;">Page 158</p> <p>1 And I'm not sure what more 2 we can say. We have an obligation 3 to ensure that we get medications 4 to the pharmacies in need. And, 5 yes, we do have an obligation to 6 help with providing access for 7 medications to the patients that 8 need them, which I guess would be 9 the public. 10 BY MR. PIFKO: 11 Q. How about in preventing 12 illegal substances from being 13 distributed, do you believe that 14 AmerisourceBergen's actions can have an 15 impact on the health and general welfare 16 of the American people? 17 MR. NICHOLAS: Object to the 18 form. 19 THE WITNESS: As long as 20 we -- again, this implies chain 21 under our control, we can do what 22 we can under our control and our 23 responsibilities and we do that 24 diligently.</p>	<p style="text-align: right;">Page 160</p> <p>1 need to dispense them to their 2 patients and that there's access 3 to patients that have been issued 4 a prescription and fill it at the 5 pharmacy, which would have an 6 impact on the health and safety of 7 the public. 8 BY MR. PIFKO: 9 Q. So you said by not having a 10 diversion occurring within the 11 distribution center, then that's how we 12 impact the health and welfare of the 13 public. 14 MR. NICHOLAS: Object to the 15 form. 16 BY MR. PIFKO: 17 Q. Do you recall saying that? 18 MR. NICHOLAS: Object to the 19 form. Are you asking what he said 20 a minute ago and just reading the 21 transcript? Is that what you're 22 doing? 23 THE WITNESS: We have an 24 obligation to maintain -- I -- I</p>
<p style="text-align: right;">Page 159</p> <p>1 And, you know, that's -- and 2 by not having a diversion 3 occurring within the distribution 4 centers, then that's how we impact 5 the health and welfare of the 6 public, by not having that occur 7 within our distribution centers. 8 BY MR. PIFKO: 9 Q. Okay. And if it does occur, 10 it could have an adverse impact on the 11 health and general welfare of the 12 American public, correct? 13 MR. NICHOLAS: Object to the 14 form. 15 THE WITNESS: I don't know 16 that. Again, we can go 17 back-and-forth again. I think we 18 covered this ground. 19 But we have on obligation to 20 have effective controls to prevent 21 diversion, which we follow. And 22 we also have an obligation to 23 ensure that we get FDA-approved 24 medications to the pharmacies that</p>	<p style="text-align: right;">Page 161</p> <p>1 don't understand what you mean by 2 that. 3 BY MR. PIFKO: 4 Q. All I'm asking is, you just 5 said: By not having diversion occurring 6 within the distribution centers, then 7 that's how we impact the health and 8 general welfare of the public. 9 A. That's a -- 10 Q. That's a quote I just read 11 from the transcript. 12 A. Then that's -- 13 Q. Okay. Do you agree to 14 having said that? 15 A. -- what I stated. 16 Again, it goes back to the 17 same issue that you have been asking me, 18 and I've answered it several times, of 19 what our role in the supply channel is, 20 how we -- what things we have in place to 21 prevent diversion. And that is our role 22 and responsibility. 23 We don't touch the patient. 24 Q. I haven't asked you a</p>

<p style="text-align: right;">Page 162</p> <p>1 question.</p> <p>2 A. I know you haven't. But you</p> <p>3 continue --</p> <p>4 MR. NICHOLAS: Let him</p> <p>5 finish.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. You're giving a speech.</p> <p>8 All I asked you --</p> <p>9 A. Well, you're reading back</p> <p>10 what I just said.</p> <p>11 Q. The question I asked is what</p> <p>12 you said. Did you say that? And you're</p> <p>13 giving a speech.</p> <p>14 MR. NICHOLAS: Hold on.</p> <p>15 Hold on. If you're going to go</p> <p>16 back and read him a portion of</p> <p>17 what he just said a minute ago --</p> <p>18 MR. PIFKO: I didn't ask him</p> <p>19 to give a speech.</p> <p>20 MR. NICHOLAS: I think you</p> <p>21 then can also let him answer your</p> <p>22 question.</p> <p>23 MR. PIFKO: No. I just</p> <p>24 said, did you say that? That's</p>	<p style="text-align: right;">Page 164</p> <p>1 question, sir. I don't want a speech to</p> <p>2 questions I'm not asking.</p> <p>3 All I asked you was if I had</p> <p>4 read that portion correctly?</p> <p>5 MR. NICHOLAS: You know</p> <p>6 what, you don't tell him that you</p> <p>7 don't want a speech or you do want</p> <p>8 a speech. Let him answer your</p> <p>9 questions. Don't lecture him.</p> <p>10 MR. PIFKO: We're going to</p> <p>11 have to have this transcript</p> <p>12 evaluated by the court for your</p> <p>13 lack of cooperation and we're</p> <p>14 going to seek appropriate remedies</p> <p>15 at the appropriate time.</p> <p>16 MR. NICHOLAS: That's fine.</p> <p>17 Do whatever you want. Let him</p> <p>18 answer your questions.</p> <p>19 MR. PIFKO: I'm trying to</p> <p>20 ask him, but he's not letting me</p> <p>21 ask questions, because he's</p> <p>22 talking about and giving speeches.</p> <p>23 MR. NICHOLAS: He's not</p> <p>24 letting you answer questions</p>
<p style="text-align: right;">Page 163</p> <p>1 all the question was. And he goes</p> <p>2 on a five-minute speech.</p> <p>3 That's not what the question</p> <p>4 was.</p> <p>5 MR. NICHOLAS: First of all,</p> <p>6 it's been about 20 seconds that</p> <p>7 he's talking. If he wanted to</p> <p>8 talk for an hour, he could. But</p> <p>9 he's not doing that. He's trying</p> <p>10 to answer your questions.</p> <p>11 MR. PIFKO: All my question</p> <p>12 was, was did I read it right?</p> <p>13 MR. NICHOLAS: You're just</p> <p>14 arguing with him.</p> <p>15 MR. PIFKO: No, my question</p> <p>16 was --</p> <p>17 MR. NICHOLAS: You're just</p> <p>18 arguing.</p> <p>19 MR. PIFKO: You're wasting</p> <p>20 our time, okay?</p> <p>21 MR. NICHOLAS: Just ask him</p> <p>22 questions. Yeah --</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. I'm trying to ask you a</p>	<p style="text-align: right;">Page 165</p> <p>1 because he is answering questions.</p> <p>2 MR. PIFKO: He's talking</p> <p>3 about things I'm not asking him.</p> <p>4 MR. NICHOLAS: You're just</p> <p>5 arguing. Go ahead.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. You said -- I'm reading from</p> <p>8 the transcript -- By not having diversion</p> <p>9 occurring within the distribution center,</p> <p>10 then that's how we impact the health and</p> <p>11 general welfare of the public.</p> <p>12 Agreed?</p> <p>13 A. That's what I said.</p> <p>14 Q. Okay. And so my question</p> <p>15 is, if diversion does occur, then that</p> <p>16 could have an adverse impact on the</p> <p>17 health and welfare of the public.</p> <p>18 Do you agree?</p> <p>19 MR. NICHOLAS: Object to the</p> <p>20 form. You really are arguing.</p> <p>21 Go ahead.</p> <p>22 THE WITNESS: If there's</p> <p>23 diversion occurring -- I mean,</p> <p>24 that's the reason why we have</p>

<p style="text-align: right;">Page 166</p> <p>1 controls in place, to protect and 2 to guard against diversion. 3 If a diversion occurs, then 4 that would have an impact. 5 BY MR. PIFKO: 6 Q. Thank you. 7 Let's go to the second page 8 of the letter, ABDCMDL 00269692. 9 Are you on that page? 10 A. Yes. 11 Q. I want to read you a section 12 from the second paragraph there; second 13 paragraph, second sentence. 14 Moreover, all registrants, 15 manufacturers, distributors, pharmacies 16 and practitioners share responsibility 17 for maintaining appropriate safeguards 18 against diversion. 19 Do you agree with that 20 statement? 21 A. Yes. 22 Q. It says, a little bit 23 further down, Given the extent of 24 prescription drug abuse in the United</p>	<p style="text-align: right;">Page 168</p> <p>1 orders that might be diverted into 2 other-than-legitimate medical, 3 scientific, and industrial channels. 4 Do you see that? 5 A. I do. 6 Q. Do you agree with that 7 statement? 8 MR. NICHOLAS: Object to the 9 form. 10 THE WITNESS: Given the -- 11 no, I don't agree. 12 BY MR. PIFKO: 13 Q. And what's the basis for 14 your disagreement? 15 A. Because up until this 16 letter, all of our interactions with DEA 17 and our consultations and meetings and 18 presentations, there had never been any 19 indication, up until this time, that we 20 were to avoid filling suspicious orders. 21 It's the first time I've seen that 22 statement. 23 Q. Let's go to the third page, 24 ABDCMDL 00269693. Tell me when you're</p>
<p style="text-align: right;">Page 167</p> <p>1 States, along with the dangerous and 2 potentially lethal consequences of such 3 abuse, even just one distributor that 4 uses its DEA registration to facilitate 5 diversion can cause enormous harm. 6 Do you agree with that 7 statement? 8 MR. NICHOLAS: I'll object 9 to the form. And ask if you're 10 going to read portions of this 11 paragraph, that you read the first 12 sentence of the paragraph as well. 13 THE WITNESS: I don't know 14 the answer to your question. 15 Because -- I don't know. 16 BY MR. PIFKO: 17 Q. Let's go down a little bit 18 further toward the third-to-last 19 paragraph. 20 In addition -- it says, 21 Thus, in addition to reporting all 22 suspicious orders, a distributor has a 23 statutory responsibility to exercise due 24 diligence to avoid filling suspicious</p>	<p style="text-align: right;">Page 169</p> <p>1 there. 2 A. Yes. 3 Q. Do you see the heading at 4 the top is, Circumstances That Might Be 5 Indicative of Diversion? 6 Do you see that? 7 A. Yes. 8 Q. It's got a list of four 9 items. 10 Do you see that? 11 A. Yes. 12 Q. Do you believe that the DEA 13 communicated this information to you? 14 MR. NICHOLAS: Object to the 15 form. 16 THE WITNESS: In this 17 letter? We received this letter, 18 yes. 19 BY MR. PIFKO: 20 Q. And then there's another 21 paragraph with ten items. 22 Do you see that? 23 A. Yes. 24 Q. Do you believe that the DEA</p>

<p style="text-align: right;">Page 170</p> <p>1 communicated this information to you?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: In -- with</p> <p>5 this letter, yes.</p> <p>6 - - -</p> <p>7 (Whereupon, Amerisource</p> <p>8 Bergen-Zimmerman Exhibit-7,</p> <p>9 ABDCMDL 00000101-122, was marked</p> <p>10 for identification.)</p> <p>11 - - -</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. I'm handing you what has</p> <p>14 been marked as Exhibit-7.</p> <p>15 Please take a moment to</p> <p>16 review this document and let me know when</p> <p>17 you're done.</p> <p>18 For the record, it's Bates</p> <p>19 labeled ABDCMDL 00000101 through 122.</p> <p>20 Let me know when you're done</p> <p>21 reviewing the document, sir.</p> <p>22 A. Okay.</p> <p>23 Q. Have you seen this document</p> <p>24 before?</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Do you have any reason to</p> <p>2 dispute that this is a document from</p> <p>3 AmerisourceBergen's files?</p> <p>4 A. No.</p> <p>5 Q. Do you dispute that this is</p> <p>6 a true and correct copy of what was in</p> <p>7 this document?</p> <p>8 A. I don't know that, because</p> <p>9 I'm not familiar with this presentation.</p> <p>10 Q. You just took some time to</p> <p>11 review the presentation, correct?</p> <p>12 A. Yes.</p> <p>13 Q. The title of the</p> <p>14 presentation, on the first page, is, ABC</p> <p>15 Diversion Control Program, Effective June</p> <p>16 25, 2007.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. You're familiar with the</p> <p>20 changes that AmerisourceBergen made to</p> <p>21 its diversion control program as a result</p> <p>22 of the settlement with the DEA, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Does this reflect changes</p>
<p style="text-align: right;">Page 171</p> <p>1 A. I don't know if I've seen</p> <p>2 this exact document, but I've seen</p> <p>3 presentations that have this material in</p> <p>4 them.</p> <p>5 Q. When you say that, what do</p> <p>6 you mean by that?</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: I'm saying</p> <p>10 that many of these slides in here</p> <p>11 look familiar. I don't know if</p> <p>12 I've seen this exact presentation.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Okay. You say you've seen</p> <p>15 some of the slides but maybe not all of</p> <p>16 the slides, or do you think you've seen</p> <p>17 all of the slides?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: I think</p> <p>21 I've -- I can't say I've seen</p> <p>22 every single slide, but I'm</p> <p>23 familiar with the information.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 173</p> <p>1 that were made to the policy as a result</p> <p>2 of that settlement?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: Yes, I believe</p> <p>6 so.</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. Having reviewed this</p> <p>9 document, do you believe this document</p> <p>10 discusses the nature of</p> <p>11 AmerisourceBergen's program as of June</p> <p>12 25th, 2007?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: I believe so.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Do you know who Steve Mays</p> <p>18 is?</p> <p>19 A. Yes.</p> <p>20 Q. Is he someone that works</p> <p>21 under you?</p> <p>22 A. Yes, he does.</p> <p>23 Q. Does he still work at the</p> <p>24 company?</p>

<p style="text-align: right;">Page 174</p> <p>1 A. He does.</p> <p>2 Q. His title at this time is</p> <p>3 senior director, corporate security and</p> <p>4 regulatory affairs.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. When he was in that title,</p> <p>8 he reported to you?</p> <p>9 A. Yes.</p> <p>10 Q. Was he a direct report to</p> <p>11 you at this time?</p> <p>12 A. He was.</p> <p>13 Q. Did you instruct him to give</p> <p>14 presentations about AmerisourceBergen's</p> <p>15 diversion control program as it was</p> <p>16 changed from the DEA settlement?</p> <p>17 A. He did presentations, yes.</p> <p>18 Q. Do you know to whom he did</p> <p>19 presentations?</p> <p>20 A. I don't know specifically.</p> <p>21 Q. You said you've seen</p> <p>22 versions of this document.</p> <p>23 Do you believe this was</p> <p>24 something that would have been presented</p>	<p style="text-align: right;">Page 176</p> <p>1 statement of the CFR1301.71.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. It's a statement of</p> <p>4 AmerisourceBergen's regulatory</p> <p>5 responsibility under this provision; is</p> <p>6 that correct?</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: It's the</p> <p>10 statement of -- for all</p> <p>11 distributors. It's 1301.71(a).</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. I'm not trying to trick you</p> <p>14 into something.</p> <p>15 I'm just asking, is it your</p> <p>16 understanding that 1301.71(a) applies to</p> <p>17 AmerisourceBergen?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: It does apply</p> <p>22 to AmerisourceBergen as a</p> <p>23 registrant.</p> <p>24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 175</p> <p>1 to people inside the company?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form. Mischaracterizes the</p> <p>4 testimony.</p> <p>5 THE WITNESS: It doesn't say</p> <p>6 who this was actually presented</p> <p>7 to. So I don't know.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. Let's go to the first page</p> <p>10 of the document here. It says,</p> <p>11 Regulatory responsibility.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Have you seen this slide</p> <p>15 before?</p> <p>16 A. I understand -- I don't know</p> <p>17 if I've seen this slide. But, yes, I've</p> <p>18 seen a slide that has this information on</p> <p>19 it, yes.</p> <p>20 Q. Can you tell me what this</p> <p>21 is?</p> <p>22 MR. NICHOLAS: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: It's just a</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. And it says, All applicants</p> <p>2 and registrants shall provide effective</p> <p>3 controls and procedures to guard against</p> <p>4 theft and diversion of controlled</p> <p>5 substances.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you agree that's what it</p> <p>9 says?</p> <p>10 A. That's what it says.</p> <p>11 Q. And you agree that's a</p> <p>12 regulatory responsibility that</p> <p>13 AmerisourceBergen has?</p> <p>14 A. Yes.</p> <p>15 Q. Let's go to the next page.</p> <p>16 It says, How?</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have an</p> <p>20 understanding, then, this is how</p> <p>21 AmerisourceBergen is supposed to carry</p> <p>22 out its responsibility to provide</p> <p>23 effective controls and procedures to</p> <p>24 guard against theft and diversion of</p>

<p style="text-align: right;">Page 178</p> <p>1 controlled substances?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: It appears</p> <p>5 that it lists the different</p> <p>6 elements under that section and</p> <p>7 states the relating Code of</p> <p>8 Federal Regulation's section and</p> <p>9 how companies may -- again, I</p> <p>10 don't know who this was to,</p> <p>11 whether it was internally, to</p> <p>12 distributors. I'm not sure who</p> <p>13 the customer was of the</p> <p>14 presentation.</p> <p>15 But it's just reiterating</p> <p>16 items that fall underneath each of</p> <p>17 the CFR sections.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. Do you believe -- or do you</p> <p>20 have an understanding that</p> <p>21 AmerisourceBergen has a responsibility to</p> <p>22 comply with the CFR sections identified</p> <p>23 here?</p> <p>24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. And afterwards it says, No</p> <p>2 problem.</p> <p>3 Let's look at the first one.</p> <p>4 A. Yes.</p> <p>5 Q. Physical security controls.</p> <p>6 No problem.</p> <p>7 Do you see that?</p> <p>8 A. Yes, I see that.</p> <p>9 Q. Records and reports of</p> <p>10 registrants. No problem.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Orders for filling -- for</p> <p>14 Schedule I and II controlled substances.</p> <p>15 No problem.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Other security controls-make</p> <p>19 a good faith inquiry; report suspicious</p> <p>20 orders; report significant losses. Gray</p> <p>21 area.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have an understanding</p>
<p style="text-align: right;">Page 179</p> <p>1 form.</p> <p>2 THE WITNESS: These are</p> <p>3 sections that we -- that fall</p> <p>4 under the distributor</p> <p>5 requirements, yes.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. And do you believe that they</p> <p>8 apply to AmerisourceBergen?</p> <p>9 A. Yes.</p> <p>10 Q. Under CFR1301.74 -- do you</p> <p>11 see that at the bottom?</p> <p>12 A. Yes.</p> <p>13 Q. It says -- for all the other</p> <p>14 ones above, it says a statement of the</p> <p>15 regulation with a short summary, and it</p> <p>16 says, No problem.</p> <p>17 Do you see that?</p> <p>18 A. I'm sorry, where?</p> <p>19 Q. If you look at each</p> <p>20 regulation, it's got a number, a bold</p> <p>21 heading, a subject of that, and then it</p> <p>22 has a brief summary of it.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 181</p> <p>1 about what it means by "gray area"?</p> <p>2 A. I think what they're</p> <p>3 referring to, under these regulations,</p> <p>4 are -- say 1301.72, physical security</p> <p>5 controls, that the DEA has been very</p> <p>6 specific.</p> <p>7 So vaults need to have</p> <p>8 poured-in-place concrete, 8 inches thick,</p> <p>9 half-inch rebar, 6 inches on center. And</p> <p>10 cages have to be developed of 10-gauge</p> <p>11 steel. Openings can't be more than 2.5</p> <p>12 inch diameter across. The structure has</p> <p>13 to be built on 6-inch -- 1-inch posts</p> <p>14 with 6 inches apart. They're very</p> <p>15 specific.</p> <p>16 With regards to reports, it</p> <p>17 explains exactly how often you have to do</p> <p>18 inventories, how to annotate it. It's</p> <p>19 black-and-white.</p> <p>20 And then also with the</p> <p>21 schedule order 222 forms, it states that</p> <p>22 you can't complete a line that has any</p> <p>23 alterations. It's very black-and-white.</p> <p>24 And when it gets to</p>

<p style="text-align: right;">Page 182</p> <p>1 reporting suspicious orders, it's very --</p> <p>2 a gray area, because it's not</p> <p>3 black-and-white. It doesn't say over</p> <p>4 five or less than four. And with</p> <p>5 significant losses, there's no</p> <p>6 definition. Is it a thousand? Is it</p> <p>7 one? Is it five? Is it 10,000?</p> <p>8 So that's, I believe, I</p> <p>9 don't want to speak for Steve Mays, but I</p> <p>10 believe that's the inference, is that DEA</p> <p>11 has been very diligent about laying out</p> <p>12 responsibilities, black-and-white,</p> <p>13 through all these requirements, and then</p> <p>14 this one area is -- they're not very</p> <p>15 specific at all. It's very open-ended.</p> <p>16 If that makes sense.</p> <p>17 Q. Let's go to the next page.</p> <p>18 It's got another CFR section</p> <p>19 here -- well, actually, the one we were</p> <p>20 just talking about, part of it.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. It says, The registrant</p> <p>24 shall design and operate a system to</p>	<p style="text-align: right;">Page 184</p> <p>1 not relieve the distributor of the</p> <p>2 responsibility to maintain effective</p> <p>3 controls to prevent diversion.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have an understanding</p> <p>7 about what that means?</p> <p>8 MR. NICHOLAS: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: That you can't</p> <p>11 just have a system that has --</p> <p>12 that reports suspicious orders and</p> <p>13 not have -- not have effective</p> <p>14 controls in all the other areas we</p> <p>15 just mentioned. It doesn't</p> <p>16 relieve your responsibility to</p> <p>17 maintain effective controls.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. Right. So just reporting a</p> <p>20 suspicious order doesn't discharge your</p> <p>21 responsibility under The Controlled</p> <p>22 Substances Act, correct?</p> <p>23 A. For recordkeeping, all those</p> <p>24 other ones we kind of just went through.</p>
<p style="text-align: right;">Page 183</p> <p>1 disclose to the registrant suspicious</p> <p>2 orders of controlled substances. The</p> <p>3 registrant shall inform field diversion</p> <p>4 office of the administration in his area</p> <p>5 of suspicious orders when covered by the</p> <p>6 registrant.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you agree that that's a</p> <p>10 regulatory responsibility that</p> <p>11 AmerisourceBergen has?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 But go ahead.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Let's go to the next page.</p> <p>18 Are we there?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Again, it says,</p> <p>21 Regulatory responsibility. It's got</p> <p>22 three bullet points.</p> <p>23 The first one says,</p> <p>24 Reporting suspicious orders to DEA does</p>	<p style="text-align: right;">Page 185</p> <p>1 They are all grouped under the same</p> <p>2 section, effective controls to prevent</p> <p>3 diversion, 1301. All of these are in</p> <p>4 1301.</p> <p>5 So just doing one of 1301,</p> <p>6 74, doesn't relieve you of all the other</p> <p>7 items under 1301.71.</p> <p>8 Q. The next bullet point says,</p> <p>9 DEA cannot/will not tell a distributor if</p> <p>10 an order is or is not legitimate; and/or</p> <p>11 if the distributor should or should not</p> <p>12 ship an order.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Is that consistent with your</p> <p>16 understanding of the DEA's position?</p> <p>17 A. Yes. At the time of this</p> <p>18 presentation, yes.</p> <p>19 Q. Then it says, Distributor</p> <p>20 must make a business decision whether or</p> <p>21 not to ship the order.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. What does that mean?</p>

<p style="text-align: right;">Page 186</p> <p>1 A. That was the discussion in 2 our negotiations with DEA, is that you 3 have to make a business decision whether 4 you want to complete the transaction. 5 It's up to the business to make that 6 decision. 7 Q. What's a business -- what's 8 a business decision mean? 9 MR. NICHOLAS: Objection. 10 Object to the form. You're asking 11 him what the DEA meant by 12 "business"? 13 MR. PIFKO: I didn't ask him 14 that. You're telling him what to 15 say. Stop doing that. 16 THE WITNESS: The 17 business -- the decision is based 18 upon the information you have and 19 whether -- again, this talks -- 20 this isn't talking about shipping 21 a suspicious order, this is 22 talking about shipping an order. 23 So if a customer has a 24 patient need that they need to</p>	<p style="text-align: right;">Page 188</p> <p>1 told you this? 2 A. If you go to the one above 3 it, DEA will not tell a distributor you 4 should or should not ship an order. 5 There's nothing about 6 suspicious order in that statement. 7 And then the second one is 8 we have to -- we have to make a decision 9 on what orders we ship and which orders 10 we do not ship. We also have to make a 11 decision which orders are suspicious and 12 we need to report. 13 Q. You said earlier, just a few 14 moments ago, that was the discussion in 15 our negotiations with DEA, is that you 16 have to make a business decision whether 17 to -- you want to complete the 18 transaction. 19 Do you recall saying that? 20 MR. NICHOLAS: I'll object 21 to this. I'll object to the 22 practice of apparently trying to 23 cross-examine Mr. Zimmerman with 24 testimony he's given in this</p>
<p style="text-align: right;">Page 187</p> <p>1 fulfill, then we need to make a 2 decision whether we ship that 3 product or not. It's our decision 4 whether we ship the product. It's 5 not the DEA's decision. 6 BY MR. PIFKO: 7 Q. Is AmerisourceBergen a 8 for-profit business? 9 A. We are a business that makes 10 profit, yes. 11 Q. You don't understand this 12 bullet point to be referring to 13 suspicious orders? 14 MR. NICHOLAS: Object to the 15 form. 16 THE WITNESS: No, it's not 17 in reference to suspicious orders 18 at all. 19 BY MR. PIFKO: 20 Q. It's just saying the 21 distributor can decide whether to ship 22 any order that it is presented with? 23 A. Correct. 24 Q. And you say that the DEA</p>	<p style="text-align: right;">Page 189</p> <p>1 deposition. 2 This is a 30(b)(6). You're 3 supposed to be seeking 4 information. 5 THE WITNESS: I would need 6 to read two or three questions 7 before that and after to 8 understand the context of my 9 statement. You're reading a 10 statement. I'm not sure -- 11 BY MR. PIFKO: 12 Q. All I'm asking you -- 13 A. -- the back-and-forth. 14 Q. -- do you recall saying the 15 discussion in our -- that was the 16 discussion in our negotiations with DEA, 17 is that you have to make a business 18 decision whether you want to complete the 19 transaction? 20 A. And what was the question? 21 Q. What I want to know is, what 22 discussions did you have with the DEA 23 about making business decisions about 24 completing transactions?</p>

Page 190

1 MR. NICHOLAS: Object to the
2 form.
3 Go ahead.
4 THE WITNESS: And so you
5 asked me what our discussion is
6 about making transactions, and my
7 response was it's our decision.
8 Yes, I said that.
9 BY MR. PIFKO:
10 Q. So you said that you
11 discussed this business decision in your
12 negotiations with DEA.
13 MR. NICHOLAS: Object to the
14 form.
15 THE WITNESS: I said --
16 MR. NICHOLAS: This is
17 cross-examination.
18 Go ahead.
19 THE WITNESS: If there's
20 confusion, I said that came --
21 that was brought up by DEA. It
22 wasn't brought up by ABC.
23 That was -- that business
24 decision context is, you can find

Page 191

1 previous DEA presentations where
2 they make that statement. That
3 isn't an ABC term. That was a DEA
4 term. Just to clarify the record.
5 BY MR. PIFKO:
6 Q. That's what I'm trying to
7 get at.
8 A. Okay. Thanks.
9 Q. Is -- so it's your testimony
10 that the DEA told you that you must make
11 a business decision whether or not to
12 ship an order?
13 MR. NICHOLAS: Objection.
14 Object to the form.
15 THE WITNESS: They stated,
16 their terms, not mine, that the
17 business -- it's up to the
18 companies to make a business
19 decision of what they ship and
20 what they don't ship. They are
21 not going to tell a distributor
22 what you can ship and what you
23 can't ship, which refers back to
24 the bullet above, the one about

Page 192

1 the business decision.
2 BY MR. PIFKO:
3 Q. And when did they tell you
4 that? You said in your negotiations?
5 A. In negotiations in 2007.
6 Q. And they made a presentation
7 to you?
8 A. In 2005.
9 Q. And they used that exact
10 language, the business decision, that's
11 in quotes?
12 A. I believe so. I believe so.
13 Q. Do you have a copy of that
14 presentation that you believe that DEA
15 made to you in your office somewhere?
16 A. We may have it somewhere,
17 yes.
18 Q. Did you make any attempts to
19 look for it?
20 MR. NICHOLAS: Objection.
21 We're making productions as we're
22 required to do in this case.
23 THE WITNESS: Is there a
24 question?

Page 193

1 BY MR. PIFKO:
2 Q. I asked if you made any
3 attempt to look for that document?
4 A. No, I did not.
5 Q. Is that something -- you
6 said you might have that in your office
7 somewhere?
8 A. I won't have -- no, I don't
9 have that in my office. We may have it
10 on file or in storage or something. It's
11 from years ago.
12 MR. NICHOLAS: Again, just
13 in case there's any implication on
14 the record that we haven't
15 produced something we were
16 supposed to produce.
17 MR. PIFKO: Again, the
18 speaking -- I got it. There's no
19 implication. The record is what
20 it is.
21 MR. NICHOLAS: Good. That's
22 all I want to hear. There's no
23 implication. That's fantastic
24 news.

Page 194	Page 196
<p>1 Go ahead.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Was anyone else present at</p> <p>4 this presentation that you're referring</p> <p>5 to?</p> <p>6 A. Steve Mays.</p> <p>7 Q. And who specifically from</p> <p>8 the DEA was there?</p> <p>9 A. I was not there. I</p> <p>10 believe -- I believe Mike Mapes.</p> <p>11 Q. Anyone else?</p> <p>12 A. I don't know, because I</p> <p>13 wasn't there.</p> <p>14 Q. Did you undertake any</p> <p>15 effort, in connection with preparing for</p> <p>16 this deposition, to learn about</p> <p>17 communications with the DEA that might</p> <p>18 have occurred?</p> <p>19 A. In what context?</p> <p>20 Q. Concerning The Controlled</p> <p>21 Substances Act.</p> <p>22 MR. NICHOLAS: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: I'm not</p>	<p>1 Steve Mays and maybe Mike Mapes from the</p> <p>2 DEA?</p> <p>3 MR. NICHOLAS: If you can</p> <p>4 answer that and it doesn't involve</p> <p>5 attorney-client communications,</p> <p>6 that's fine. If not, please don't</p> <p>7 answer.</p> <p>8 THE WITNESS: I can't</p> <p>9 answer.</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. So the only conversations</p> <p>12 you may have had about this meeting</p> <p>13 were -- involved counsel?</p> <p>14 MR. NICHOLAS: I'm going to</p> <p>15 instruct him not to answer.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. You're unable to answer any</p> <p>18 questions about inquiries about this</p> <p>19 meeting based on the attorney-client</p> <p>20 privilege; is that correct?</p> <p>21 MR. NICHOLAS: I'll instruct</p> <p>22 him not to answer. I'm</p> <p>23 instructing him not to answer. He</p> <p>24 doesn't have to answer questions</p>
Page 195	Page 197
<p>1 understanding your question. I'm</p> <p>2 sorry.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. I'm just asking if you tried</p> <p>5 to learn about the company's</p> <p>6 communications with the DEA in connection</p> <p>7 with preparing for this deposition.</p> <p>8 A. Yes.</p> <p>9 Q. Did you ask anyone about</p> <p>10 that meeting that we were just talking</p> <p>11 about where Steve Mays and maybe Mike</p> <p>12 Mapes was there?</p> <p>13 A. I think --</p> <p>14 THE WITNESS: Is that a</p> <p>15 legal question?</p> <p>16 MR. NICHOLAS: To the extent</p> <p>17 this question invades the</p> <p>18 attorney-client privilege, don't</p> <p>19 answer it. I'll instruct you not</p> <p>20 to answer it.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. All I'm asking is if you</p> <p>23 asked anyone other than counsel about</p> <p>24 this meeting where -- in 2005 between</p>	<p>1 about this.</p> <p>2 MR. PIFKO: I'm trying to</p> <p>3 understand the privilege that's</p> <p>4 being asserted here.</p> <p>5 MR. NICHOLAS: It's the</p> <p>6 attorney-client privilege.</p> <p>7 MR. PIFKO: So the witness</p> <p>8 is being instructed not to answer</p> <p>9 any questions about efforts he</p> <p>10 undertook to learn about this</p> <p>11 meeting; is that correct?</p> <p>12 MR. NICHOLAS: No, not at</p> <p>13 all.</p> <p>14 MR. PIFKO: That's what I'm</p> <p>15 trying to understand. So I'm</p> <p>16 asking the witness --</p> <p>17 MR. NICHOLAS: If the</p> <p>18 witness undertook any efforts</p> <p>19 in -- at the direction of or, you</p> <p>20 know, in conjunction with attorney</p> <p>21 communications, then I'm only</p> <p>22 instructing him to answer in that</p> <p>23 respect.</p> <p>24 BY MR. PIFKO:</p>

Page 198

1 Q. Aside from any efforts at
2 the direction of counsel or in
3 conjunction with an attorney, did you
4 engage in any efforts to learn about this
5 DEA meeting between Steve Mays and Mike
6 Mapes in 2005?
7 A. No.
8 Q. You don't know if anyone
9 else was present besides the two of them?
10 A. I don't know.
11 Q. Let's go to the next page.
12 MR. NICHOLAS: For planning
13 purposes, purely a scheduling
14 thing, after you get through this
15 document --
16 MR. PIFKO: We'll take a
17 break.
18 MR. NICHOLAS: For lunch or
19 a short break, whatever you
20 prefer.
21 BY MR. PIFKO:
22 Q. I'm on ABDCMDL 0000106.
23 Are you there?
24 A. Yes.

Page 199

1 Q. It says, ABCD -- sorry.
2 ABC's diversion control program. It's
3 got some bullet points here.
4 Are you familiar with these?
5 A. Yes.
6 Q. "Know your customer" due
7 diligence.
8 Know your customer is in
9 quotes.
10 What does that mean?
11 MR. NICHOLAS: Object to the
12 form.
13 THE WITNESS: Through our --
14 in our negotiations, as I
15 indicated, that one of the changes
16 that we enhanced in our program
17 was a, as it's in quotes, "know
18 your customer" due diligence
19 process that we added.
20 BY MR. PIFKO:
21 Q. And what does it mean to
22 know your customer?
23 A. So part of --
24 MR. NICHOLAS: Object to the

Page 200

1 form.
2 Go ahead.
3 THE WITNESS: So part of our
4 agreement was to, we created a
5 questionnaire that would be
6 completed by the customer and our
7 sales individual, which included,
8 you know, questions about the
9 pharmacy, the pharmacist in
10 charge, prior history, those type
11 of questions.
12 And then also it included
13 pictures of the inside and the
14 outside of the facility. And then
15 we would take that 590 form back
16 to CSRA, and they would then
17 verify the information, do some
18 checks on the pharmacy and the
19 pharmacist in charge in order to
20 know our customer, in addition to
21 verification of the licenses.
22 BY MR. PIFKO:
23 Q. At what point in the process
24 was this Form 590 used --

Page 201

1 MR. NICHOLAS: Object to the
2 form.
3 BY MR. PIFKO:
4 Q. -- in connection with the
5 customer relationship?
6 A. It was used prior to
7 onboarding the customer, after 2000 --
8 after June 2007.
9 Q. Okay.
10 A. Yeah, 2007.
11 Q. So after June 25th, 2007,
12 AmerisourceBergen implemented this Form
13 590 "know your customer" program for all
14 new customers?
15 A. Yes.
16 Q. What about for existing
17 customers who are already customers as of
18 June 25th, 2007, do they have an
19 obligation to fill out a Form 590?
20 A. No. And that was done --
21 that was part of the negotiation process
22 with DEA, that any customer, moving
23 forward, needed this "know your customer"
24 process implemented.

<p style="text-align: right;">Page 202</p> <p>1 Q. And so it's your 2 understanding that there was no "know 3 your customer" requirement for existing 4 customers as of June 25th, 2007? 5 MR. NICHOLAS: Object to the 6 form. 7 THE WITNESS: So prior -- I 8 mean, the regulation requires a 9 good faith inquiry that they're 10 properly licensed, and we did 11 that. We ensured that all 12 pharmacies were licensed by both 13 DEA and any state regulatory 14 authorities prior to that; in 15 addition to the other information 16 obtained from a customer, credit 17 information, that type. 18 BY MR. PIFKO: 19 Q. So other than credit 20 information and, as you say, a good faith 21 inquiry that they're properly licensed, 22 there was no other "know your customer" 23 requirements for existing customers as of 24 June 25th, 2007?</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. Pre 2007. 2 A. Pre it was my department's 3 responsibility to collect the licensing 4 information and maintain, through 5 systems, an auditing function, to ensure 6 that the customers retained their license 7 and that they were scheduled in the 8 appropriate schedules, II, III, IV and V 9 that we talked about, and ensure that we 10 were properly loaded and maintained. 11 Q. And then post June 25th, 12 2007, it was the sales associates' 13 responsibility to fill out the Form 590 14 based on information from the customer? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: They would, in 18 conjunction with the customer, 19 complete the information on the 20 form. And then they would provide 21 that to my department. 22 And we would do all the 23 verification and background 24 information and due diligence</p>
<p style="text-align: right;">Page 203</p> <p>1 MR. NICHOLAS: Object to the 2 form. I'm not sure that was his 3 testimony. 4 Go ahead. 5 THE WITNESS: So as I 6 stated, the "know your" -- the 7 big -- the "know your customer" 8 due diligence process was an 9 addition to the 590 questionnaire. 10 And we had sales individuals that 11 would go to the facility before we 12 opened them up, of course, and 13 then collect, as I indicated, the 14 credit information, the licensing 15 information. And that was -- that 16 was pretty much the process prior 17 to 2007. 18 BY MR. PIFKO: 19 Q. And it's the sales 20 associate's job to obtain the information 21 about the customer? 22 A. I'm not -- are you 23 referencing the 590 or are we talking 24 about pre --</p>	<p style="text-align: right;">Page 205</p> <p>1 prior to opening the account. So 2 the salesperson was merely there 3 to collect the information, and 4 then my group would verify that. 5 BY MR. PIFKO: 6 Q. What efforts did you take to 7 verify that information? 8 A. So we would go on state 9 Board of Pharmacy sites; we would, you 10 know, ensure that the pharmacist was 11 properly licensed; we would look at 12 enforcement action or history, DEA 13 history, if they had any. And those type 14 of things. 15 Q. Anything else? 16 MR. NICHOLAS: Object to the 17 form. 18 Go ahead. 19 THE WITNESS: I'm sure there 20 was a lot more. That's -- off the 21 top of my head, and that's what we 22 did. 23 BY MR. PIFKO: 24 Q. You can't think of anything</p>

<p style="text-align: right;">Page 206</p> <p>1 else, sitting here today?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form. He just told you.</p> <p>4 MR. PIFKO: You have to stop</p> <p>5 this, he just told you. You can</p> <p>6 object. You can say your</p> <p>7 objection. But you can't tell him</p> <p>8 stuff. You keep doing that. It's</p> <p>9 improper.</p> <p>10 MR. NICHOLAS: I don't keep</p> <p>11 doing it. But sometimes I get a</p> <p>12 little exacerbated, because I</p> <p>13 think you're being unfair to the</p> <p>14 witness.</p> <p>15 THE WITNESS: That's what I</p> <p>16 remember.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. That's all you remember?</p> <p>19 A. At the moment, yes.</p> <p>20 Q. After filling out this form,</p> <p>21 was there any ongoing responsibility of</p> <p>22 the sales associate to obtain "know your</p> <p>23 customer" information about</p> <p>24 AmerisourceBergen's customers?</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Well, that's what I'm trying</p> <p>2 to understand.</p> <p>3 So you're saying different</p> <p>4 things, and we're going to -- I'm going</p> <p>5 to ask you so we get an understanding.</p> <p>6 You just said the "know your</p> <p>7 customer" due diligence process was for</p> <p>8 the onboarding of new customers. But</p> <p>9 then you said once they were onboarded,</p> <p>10 they were treated -- there was --</p> <p>11 depending on the activity.</p> <p>12 So I'm just trying to</p> <p>13 understand. This "know your customer"</p> <p>14 due diligence, this is just a process for</p> <p>15 onboarding new customers; is that</p> <p>16 correct?</p> <p>17 A. Correct. At this time, in</p> <p>18 2007.</p> <p>19 Q. At any time after 2007 was</p> <p>20 there an expansion of the "know your</p> <p>21 customer" due diligence process beyond</p> <p>22 the onboarding of a new customer?</p> <p>23 A. It continually changed over</p> <p>24 time and enhanced. The form would -- you</p>
<p style="text-align: right;">Page 207</p> <p>1 A. Not in the -- in the sense</p> <p>2 that they regularly visit their customers</p> <p>3 and that relationship, but not from a</p> <p>4 regulatory standpoint.</p> <p>5 Q. How about anyone else at the</p> <p>6 company; did anyone else at the company</p> <p>7 undertake an effort to know your</p> <p>8 customer, perform "know your customer"</p> <p>9 due diligence after the Form 590 was</p> <p>10 filled out?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: I guess I'm</p> <p>14 not understanding your question.</p> <p>15 The "know your customer" due</p> <p>16 diligence process was for the</p> <p>17 onboarding of new customers. Once</p> <p>18 they were onboarded, they were</p> <p>19 treated like -- I mean, they were</p> <p>20 customers. So there wouldn't be</p> <p>21 ongoing diligence; there could be,</p> <p>22 depending upon the activity of the</p> <p>23 customer.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 209</p> <p>1 know, we would add more information as we</p> <p>2 went. So as we gained more information</p> <p>3 and knowledge, we would -- the form would</p> <p>4 change. So it did change over time.</p> <p>5 And then there was ongoing</p> <p>6 due diligence of the customers, I think</p> <p>7 is what you were getting at.</p> <p>8 Q. And what kind of ongoing due</p> <p>9 diligence was there? Let's be specific</p> <p>10 about what time periods we're talking</p> <p>11 about.</p> <p>12 So in June 25, 2007, what</p> <p>13 ongoing due diligence was conducted by</p> <p>14 AmerisourceBergen of its customers?</p> <p>15 A. So that would almost</p> <p>16 probably fall under the investigations</p> <p>17 bucket, depending upon the activity of</p> <p>18 the customer, whether they wanted</p> <p>19 changes, whether they were, you know,</p> <p>20 being changed in the program, whether</p> <p>21 they were increasing sales or changing</p> <p>22 areas of service, we may have to do</p> <p>23 additional due diligence on those</p> <p>24 customers to support whatever activity</p>

Page 210	Page 212
<p>1 was occurring.</p> <p>2 Q. Who would be responsible for</p> <p>3 performing that due diligence?</p> <p>4 A. That would be the diversion</p> <p>5 control folks.</p> <p>6 Q. And when you say they wanted</p> <p>7 changes, what kind of changes do you</p> <p>8 mean? Like changes to their thresholds?</p> <p>9 A. That could be one. If they</p> <p>10 took on new business, if they took on a</p> <p>11 new nursing home that required additional</p> <p>12 prescriptions that were going to be</p> <p>13 flowing through the customer; whatever</p> <p>14 things could impact their business.</p> <p>15 Q. Any other types of things,</p> <p>16 like when you talk about changes that a</p> <p>17 customer would request, that you're</p> <p>18 referring to?</p> <p>19 MR. NICHOLAS: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I mean,</p> <p>22 there's a whole host of things</p> <p>23 that could go into whether they</p> <p>24 required due diligence. Whether</p>	<p>1 object to the form. There's been</p> <p>2 testimony on this.</p> <p>3 Go ahead.</p> <p>4 THE WITNESS: I mean, the</p> <p>5 due diligence didn't stop. I</p> <p>6 mean, it continued whether --</p> <p>7 depending on what the issues were,</p> <p>8 and it's still in place today.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. I guess what I'm trying to</p> <p>11 get at is whether there were any specific</p> <p>12 articulated, expressed policies</p> <p>13 concerning due diligence that were added</p> <p>14 after June 25th, 2007.</p> <p>15 MR. NICHOLAS: Object to the</p> <p>16 form. We're talking now between</p> <p>17 2007, 2014, right?</p> <p>18 MR. PIFKO: Correct.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. Let's go to the next page.</p> <p>22 MR. NICHOLAS: It's a longer</p> <p>23 document than I thought, so I may</p> <p>24 ask to take a break before you get</p>
Page 211	Page 213
<p>1 they had -- you know, if there was</p> <p>2 an issue, if we had a suspicious</p> <p>3 order being reported, we may</p> <p>4 perform additional due diligence.</p> <p>5 There's a whole host of</p> <p>6 other things that could occur that</p> <p>7 would create due diligence.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. And this is as of June 25th,</p> <p>10 2007?</p> <p>11 A. This was -- yes, this is the</p> <p>12 program that we rolled out.</p> <p>13 Q. But I'm talking about this</p> <p>14 due diligence that you were just talking</p> <p>15 about.</p> <p>16 A. Yes.</p> <p>17 Q. That's effective as of that</p> <p>18 time period?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. At any point in time</p> <p>21 later, up to the end of 2014, was there</p> <p>22 changes to -- additional layers of due</p> <p>23 diligence that the company added?</p> <p>24 MR. NICHOLAS: Well, I'll</p>	<p>1 through it.</p> <p>2 MR. PIFKO: I'm not going to</p> <p>3 go through the entire history. I</p> <p>4 only have a couple more pages I</p> <p>5 want to ask about.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. ABDCMDL 0000107.</p> <p>8 Are you there?</p> <p>9 A. Yes.</p> <p>10 Q. This page provides some</p> <p>11 additional discussion of the Form 590 you</p> <p>12 were just talking about and the "know</p> <p>13 your customer" due diligence.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. It says, Retail chain</p> <p>17 pharmacies are exempted.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. What does that mean?</p> <p>21 MR. NICHOLAS: Object to the</p> <p>22 form.</p> <p>23 If you know.</p> <p>24 THE WITNESS: So part of our</p>

<p style="text-align: right;">Page 214</p> <p>1 negotiations with DEA, as we were 2 developing this new, enhanced 3 program, was who would this apply 4 to. And they exempted retail 5 chain pharmacies, I believe it 6 was, over ten. There was a number 7 that constituted chain. And that 8 was during the negotiation process 9 with DEA. 10 BY MR. PIFKO: 11 Q. And so the DEA told 12 AmerisourceBergen that they could exempt 13 them from this process? 14 A. Yes. 15 Q. Was that in writing? 16 A. That was the program we 17 developed. That was the program they 18 reviewed before they released our 19 license. They went out and audited five 20 of our facilities and inspected our 21 program and processes and our 590 forms, 22 and they gave us our license back. 23 Q. Were there any meetings at 24 which you participated with DEA where</p>	<p style="text-align: right;">Page 216</p> <p>1 June until August, we want you to 2 implement the program and then we're 3 going to come in and audit you. We'll 4 give you a two-month run to make sure 5 you're completing your processes. And if 6 it's acceptable, after we do five 7 inspections at your facilities and your 8 corporate headquarters, then we will 9 release you. 10 So there was a lot of 11 meetings and a lot of discussions around 12 a lot of these -- a lot of these points. 13 Q. Did you have an 14 understanding as to why retail chain 15 pharmacies, as you said, of ten or more, 16 were exempted from this requirement? 17 A. Because at the time, the 18 issue was a lot was around Internet 19 pharmacies. And part of the 590 form, in 20 addition to the pharmacists in charge, 21 they also wanted ownership information. 22 So a lot of the due 23 diligence was around who owned the 24 pharmacy. And it was a process. They</p>
<p style="text-align: right;">Page 215</p> <p>1 that was discussed? 2 A. Yes. 3 Q. Was there more than one? 4 A. So during this process of 5 April, when we had our first immediate 6 suspension order, through August, there 7 was a negotiation process where I was 8 down there almost once a week with DEA 9 talking about the enhancements that they 10 would like us to put into our programs. 11 And it was a back-and-forth 12 and a negotiation. And we talked about 13 the thresholds, we talked about due 14 diligence. And we would provide the form 15 that we proposed and we would go back and 16 forth, add this, delete this, this. 17 Should it apply to hospitals? Should it 18 apply to retail? What about chains? 19 All of that was discussed 20 because they wanted to get this right out 21 of the gate. So there's a lot of 22 discussion. 23 And once we came up with an 24 acceptable program, they said, okay, from</p>	<p style="text-align: right;">Page 217</p> <p>1 figure chains are a corporate entity, 2 they're all owned by -- so a lot of the 3 information really didn't apply. And 4 that was a lot of the discussion of why 5 the chains were exempted. 6 Q. Any other aspects that you 7 can recall about why chains were 8 exempted? 9 A. Not that I can remember. 10 Q. Let's go to Page, only two 11 more pages after, to 109. 12 Are you there? 13 A. Yes. 14 Q. The second bullet point 15 says, Historically controlled 16 substance/listed chemical order 17 monitoring process has been based -- 18 order monitoring has been based on a 19 ship-and-report process. 20 Do you see that? 21 A. Yes. 22 Q. That's what we talked about 23 earlier, that prior to this date, 24 AmerisourceBergen's procedure was to ship</p>

<p style="text-align: right;">Page 218</p> <p>1 the orders, and if there was anything 2 suspicious, they would report it the next 3 morning or day? 4 MR. NICHOLAS: Object to the 5 form. Outside the scope. 6 Go ahead. 7 THE WITNESS: The process 8 prior to this was the one that was 9 previously accepted by DEA in 10 collaboration, and the process was 11 to report the orders the 12 following -- it could be day, week 13 or month. It was up to the 14 regional DEA office of how they 15 wanted the information. 16 BY MR. PIFKO: 17 Q. Okay. But the emphasis 18 here, it's in bold, is ship and report. 19 So the idea is you're 20 shipping first to the customer and then 21 later you're reporting? 22 A. Correct. 23 Q. And then it says, now -- 24 well, it says, ABC's OMP process is now</p>	<p style="text-align: right;">Page 220</p> <p>1 MR. NICHOLAS: At which 2 time? 3 THE WITNESS: Yeah, after 4 2000 -- 5 BY MR. PIFKO: 6 Q. I'm talking June 25th, 2007. 7 A. After we implemented the new 8 program, our policy was not to ship a 9 suspicious order, an order we deemed to 10 be suspicious. 11 Q. I'm asking just because this 12 says -- we were just talking about 13 reporting, but I'm talking about whether 14 you actually completed the shipment. 15 So you're saying your 16 policy, as of June 25th, 2007 was not to 17 ship an order that you deemed to be 18 suspicious? 19 A. Correct. 20 Q. Okay. 21 A. It could have been June 22 27th. Again, the final order wasn't 23 released until August. 24 So, again, I don't want you</p>
<p style="text-align: right;">Page 219</p> <p>1 based on: Identify, capture, 2 investigate, and report suspicious 3 orders; all prior to shipment. 4 And "prior to shipment" is 5 in bold. 6 Do you see that? 7 A. Yes. 8 Q. What does that mean? 9 A. It means now that instead of 10 reporting orders the next day, week, 11 month, that you had to have a system that 12 we developed, with whatever the threshold 13 trigger, algorithm, whatever you want to 14 call it, would identify an order of 15 interest and then it was up to the -- up 16 to us to then have to investigate that -- 17 capture, stop it, review it and then 18 either determine whether it was 19 suspicious or not. And you could either 20 release it, reject it or report it. 21 Q. At this time, if an order 22 was suspicious, was it 23 AmerisourceBergen's policy to ship the 24 order?</p>	<p style="text-align: right;">Page 221</p> <p>1 to hold me to -- it could be -- I think 2 it was implemented on June 25th. It 3 could have been July 1. I'm not -- 4 Q. So in the summer -- 5 A. -- but that was our 6 negotiated process. And when we got -- 7 when DEA audited our facilities, it was 8 in place, whether it was this date or the 9 day before or the day after. I just want 10 to be clear that -- 11 Q. On or around the summertime 12 of 2007, we can agree about that? 13 A. Yes. It was between the 14 time we lost our license until we got it 15 back. 16 Q. I think just one more page, 17 and then we can take a break. 18 Go to 114, please. 19 Are you there? 20 A. Yes. 21 Q. The third bullet point says, 22 Each distribution center (DC) is 23 responsible for initial review of all 24 orders in OMP review.</p>

<p style="text-align: right;">Page 222</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And then it says, If the DC</p> <p>4 can determine the order is not</p> <p>5 suspicious, the DC will release the</p> <p>6 order.</p> <p>7 So is this saying it's up to</p> <p>8 the distribution center to make the</p> <p>9 determination about whether an order is</p> <p>10 suspicious or release it?</p> <p>11 A. They have the first look at</p> <p>12 the order. Because, again, remember,</p> <p>13 orders are processed at night, shipped</p> <p>14 the next day. These are -- these are</p> <p>15 products that pharmacies need -- are</p> <p>16 expecting that next morning, to service</p> <p>17 their patients.</p> <p>18 So if a hospital orders --</p> <p>19 say a Cleveland Clinic order comes</p> <p>20 through, they have the first look to see</p> <p>21 if it's a suspicious order, and if not,</p> <p>22 they can release that order.</p> <p>23 Q. And the distribution center</p> <p>24 staff who is responsible for making this</p>	<p style="text-align: right;">Page 224</p> <p>1 any question, they kick it up to</p> <p>2 corporate. This was the process in place</p> <p>3 when DEA inspected our facilities. They</p> <p>4 talked to the folks that were these</p> <p>5 responsible people in charge, they</p> <p>6 watched how they reviewed the orders and</p> <p>7 the process.</p> <p>8 So before they approved it,</p> <p>9 they actually saw it in action and who</p> <p>10 was reviewing them at the DC. And then</p> <p>11 also which orders they were kicking up</p> <p>12 and what we were reviewing at corporate.</p> <p>13 And then a report was --</p> <p>14 anything that was released that night by</p> <p>15 the responsible person, we got a report</p> <p>16 that the manager reviewed the very next</p> <p>17 day, just in the event that maybe there</p> <p>18 was an issue with training or they didn't</p> <p>19 understand, we would be able to -- there</p> <p>20 was also a QA function to that as well.</p> <p>21 We just didn't have everyone</p> <p>22 review orders and have the ability to</p> <p>23 release them.</p> <p>24 MR. PIFKO: We can take a</p>
<p style="text-align: right;">Page 223</p> <p>1 determination is warehouse managers, case</p> <p>2 clerks, data processing people; is that</p> <p>3 correct?</p> <p>4 A. They are what we refer to as</p> <p>5 responsible person. And we provide</p> <p>6 specific training in that area.</p> <p>7 Q. What does a "responsible</p> <p>8 person" mean?</p> <p>9 A. The person that has the</p> <p>10 responsibility to review these incoming</p> <p>11 orders that have been hit as a</p> <p>12 potential order of interest. And they</p> <p>13 receive special training in what to look</p> <p>14 for, how to process them. And they</p> <p>15 have -- and the initial training and then</p> <p>16 annual training thereafter.</p> <p>17 Q. And this is done -- we</p> <p>18 talked about the timing of shipments come</p> <p>19 in at night and are shipped in the</p> <p>20 morning, this is done at night?</p> <p>21 A. This is done at night,</p> <p>22 correct.</p> <p>23 The first wave. Any --</p> <p>24 any -- the training is that if they have</p>	<p style="text-align: right;">Page 225</p> <p>1 break.</p> <p>2 VIDEO TECHNICIAN: Going off</p> <p>3 the record. The time is 12:30</p> <p>4 p.m.</p> <p>5 - - -</p> <p>6 (Whereupon, a luncheon</p> <p>7 recess was taken.)</p> <p>8 - - -</p> <p>9 VIDEO TECHNICIAN: We're</p> <p>10 back on the record. The time is</p> <p>11 1:19 p.m.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Let's go back to Exhibit-6,</p> <p>14 the stack of Dear Registrant letters.</p> <p>15 Let's go two pages in to the</p> <p>16 second -- or the Dear Registrant letter</p> <p>17 dated December 27th, 2007.</p> <p>18 Do you see that? It's on</p> <p>19 Bates label ABDCMDL 00269685.</p> <p>20 Are you there, sir?</p> <p>21 A. Yes.</p> <p>22 Q. Did AmerisourceBergen</p> <p>23 receive this letter?</p> <p>24 MR. NICHOLAS: Could you</p>

<p style="text-align: right;">Page 226</p> <p>1 just ask him to take -- give him 2 just a minute to take a quick look 3 at it and make sure he's familiar 4 with the document before he 5 responds to these questions. 6 MR. PIFKO: I think we went 7 over these before. 8 MR. NICHOLAS: I think you 9 showed him the one and asked him 10 that question. He didn't look at 11 all the letters. He looked at 12 one. 13 THE WITNESS: Okay. 14 BY MR. PIFKO: 15 Q. Are you ready? It's a 16 two-page letter here. 17 A. Yes. 18 Q. Did AmerisourceBergen 19 receive this letter? 20 A. I believe so, at the 21 distribution centers. 22 Q. And that would have been on 23 or around the date of this letter, 24 December 27th, 2007?</p>	<p style="text-align: right;">Page 228</p> <p>1 CSA compliance were discussed with DEA. 2 Generally, do you recall 3 that? 4 A. We've had ongoing 5 communications with DEA since I started 6 with the company. I referenced our 7 negotiations with them in '96 to '98, 8 with the suspicious order monitoring 9 program, which resulted in an approval 10 letter. And then the negotiations, in 11 2007. 12 So we've had ongoing -- and 13 we also provided training for DEA 14 diversion investigators from '99 to 2004 15 or '05. So we've had an open dialogue 16 with DEA since I've been with the 17 company. 18 Q. Did anyone at the company 19 discuss this statement with the DEA and 20 how it impacted some of the prior 21 discussions that you may have had with 22 them? 23 MR. NICHOLAS: Object to the 24 form.</p>
<p style="text-align: right;">Page 227</p> <p>1 A. I would assume so. 2 Q. Let's go to the second 3 paragraph, last sentence -- or, sorry, 4 second-to-last sentence. 5 Accordingly, DEA does not 6 approve or otherwise endorse any specific 7 system for reporting suspicious orders. 8 Past communications with DEA, whether 9 implicit or explicit, that could be 10 construed as approval of a particular 11 system for reporting suspicious orders 12 should no longer be taken to mean that 13 DEA approves a specific system. 14 Do you see that? 15 A. Yes. 16 Q. Were you aware that that was 17 a statement that the DEA had made to 18 AmerisourceBergen at that time? 19 A. Yes. 20 Q. Did you discuss that with 21 anyone at the company? 22 A. No. 23 Q. Earlier you testified that 24 certain aspects of AmerisourceBergen's</p>	<p style="text-align: right;">Page 229</p> <p>1 THE WITNESS: No. 2 BY MR. PIFKO: 3 Q. For example, with respect to 4 the business decision that we talked 5 about in Exhibit-7 that you recalled 6 having been derived from a meeting in 7 2005, did anyone say to the DEA, as a 8 result of this December 27th, 2007 9 letter, we can no longer rely on that? 10 MR. NICHOLAS: Object to the 11 form. Only if you're asking about 12 any conversation anyone at the 13 company ever had. I don't know 14 how he can answer that. 15 But go ahead. 16 THE WITNESS: Can you 17 restate that or paraphrase the 18 question, please? 19 BY MR. PIFKO: 20 Q. Do you remember that 21 Exhibit-7 talked about the business 22 decision about whether to ship an order? 23 A. Yes. 24 Q. You remember testifying that</p>

<p style="text-align: right;">Page 230</p> <p>1 that was derived from a conversation with 2 the DEA in 2005? 3 A. It wasn't derived from a 4 conversation. It was -- it was -- you 5 had asked about the quotations of the 6 business decision, and that was a slide 7 on a DEA slide, not ABC slide. 8 Q. From a -- you said from a 9 presentation between Steve Mays and Mike 10 Mapes in 2005? 11 A. From a presentation from DEA 12 to Steve Mays. 13 Q. Did anyone, at this time, 14 reach out to the DEA and say, we can no 15 longer rely on that presentation? 16 MR. NICHOLAS: Object to the 17 form. 18 THE WITNESS: No. 19 BY MR. PIFKO: 20 Q. This letter also says, in 21 the second paragraph, Filing a monthly 22 report -- Filing a monthly report of 23 completed transactions, e.g., excessive 24 purchase report or high unit purchases,</p>	<p style="text-align: right;">Page 232</p> <p>1 agree that its responsibility continued 2 after the filing of a suspicious order 3 report? 4 MR. NICHOLAS: Object to the 5 form. 6 THE WITNESS: I mean, the 7 program we developed, which is 8 pretty much two months, three -- a 9 few months before this letter, is 10 pretty much in line with this 11 letter, in that -- in the way that 12 this is written, I'm not sure if 13 they're referring that an order 14 that hits a -- they're calling it 15 an excessive purchase, meet the 16 requirements of suspicious order, 17 is that an order of interest or a 18 suspicious order? 19 So I'm not really sure of 20 the context of their statement. 21 BY MR. PIFKO: 22 Q. Well, he's saying, 23 Responsibility does not end merely with 24 the filing of a suspicious order report.</p>
<p style="text-align: right;">Page 231</p> <p>1 does not meet the regulatory requirement 2 to report suspicious orders. Registrants 3 are reminded that their responsibility 4 does not end merely with the filing of a 5 suspicious order report. 6 Do you see that? 7 A. Are you in the -- 8 MR. NICHOLAS: Could you 9 highlight it on the screen? 10 MR. CLUFF: We're putting it 11 up now. It was actually the third 12 paragraph. 13 THE WITNESS: I didn't see 14 that. Sorry. 15 What line in the third 16 paragraph? I just want to make 17 sure, if I'm commenting on this. 18 And your question? I'm 19 sorry. 20 BY MR. PIFKO: 21 Q. You see that, first, was the 22 question? You do see it now? 23 A. Yes. 24 Q. Okay. Did AmerisourceBergen</p>	<p style="text-align: right;">Page 233</p> <p>1 So he's talking about 2 suspicious orders. 3 Do you see that? 4 A. Yes. 5 Q. So my question is, does 6 AmerisourceBergen agree that its 7 responsibility extends beyond the filing 8 of a suspicious order report? 9 MR. NICHOLAS: Object to the 10 form. 11 But go ahead. 12 THE WITNESS: I'm not really 13 sure of the context of -- once we 14 file the suspicious order report, 15 I'm not necessarily saying that 16 there's any additional 17 responsibility we have after the 18 filing of the suspicious order 19 report. 20 BY MR. PIFKO: 21 Q. So you disagree with that 22 statement, is that what I'm hearing you 23 say? 24 That's fine, whatever you're</p>

<p style="text-align: right;">Page 234</p> <p>1 saying. I just don't understand your 2 answer. 3 MR. NICHOLAS: Object to the 4 form. 5 Go ahead. 6 THE WITNESS: Yes. 7 BY MR. PIFKO: 8 Q. Yes, you disagree? 9 A. I disagree -- let me read it 10 on the page, so I can make sure that -- 11 So again, it depends on the 12 context of the sentence. Our registrants 13 are reminded that their responsibility 14 does not end merely with the filing of a 15 suspicious order. 16 That's correct. We have 17 other responsibilities to have adequate 18 controls to prevent diversion, other than 19 the filing of a suspicious order. So I'm 20 not sure if their statement is in the 21 context of filing a suspicious order and 22 the totality of the distributor's 23 responsibility. 24 Q. Well, let me ask a different</p>	<p style="text-align: right;">Page 236</p> <p>1 form. Outside the scope. 2 THE WITNESS: I don't think 3 that is in line with the 4 regulatory responsibilities of a 5 distributor, to define a program 6 to report suspicious orders. 7 BY MR. PIFKO: 8 Q. Let's go to the last 9 sentence of that paragraph. 10 It says, Reporting an order 11 as suspicious will not absolve the 12 registrant of responsibility if the 13 registrant knew or should have known that 14 controlled substances were being 15 diverted. 16 Do you see that? 17 A. I do see that. 18 Q. Do you agree with that 19 statement? 20 A. If I had more understanding 21 of what should have -- what they're 22 constituting as should have known. 23 Q. Do you believe that if 24 AmerisourceBergen knows that controlled</p>
<p style="text-align: right;">Page 235</p> <p>1 question. 2 Regardless of what this 3 letter says or doesn't say, does 4 AmerisourceBergen agree that with respect 5 to a suspicious order, its 6 responsibilities under The Controlled 7 Substances Act don't end by merely filing 8 a suspicious order report? 9 MR. NICHOLAS: Object to the 10 form. 11 THE WITNESS: I think my 12 last answer is the -- is the same 13 answer. 14 That filing a suspicious 15 order does not meet all the 16 requirements of -- to have an 17 effective controls for diversion. 18 So my answer is the same. 19 BY MR. PIFKO: 20 Q. Do you believe that 21 AmerisourceBergen is required to conduct 22 due diligence of a suspicious order even 23 after a suspicious order report is filed? 24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 237</p> <p>1 substances are being diverted, it has to 2 do more to prevent diversion beyond just 3 reporting it? 4 MR. NICHOLAS: Object to the 5 form. Could you be more specific 6 with the question? 7 THE WITNESS: It's a 8 hypothetical question, I think. 9 BY MR. PIFKO: 10 Q. You can't give an answer to 11 the question? 12 A. If we -- I think, if a 13 distributor knows that a pharmacy and -- 14 they know that they're diverting, then 15 they have responsibility to react. 16 Q. So do you agree that the 17 company has a responsibility to act? 18 A. If they have -- 19 MR. NICHOLAS: Object to the 20 form. 21 Go ahead. 22 THE WITNESS: If they know 23 there's a pharmacy that's -- that 24 they know is diverting product.</p>

<p style="text-align: right;">Page 238</p> <p>1 BY MR. PIFKO: 2 Q. Okay. So just, again, I'm 3 not trying to misstate your testimony, I 4 just want to get a clear record. 5 So it's my understanding 6 that what you just said is if 7 AmerisourceBergen knows that a pharmacy 8 is diverting product, it has a 9 responsibility to act; is that correct? 10 MR. NICHOLAS: Object to the 11 form. 12 THE WITNESS: It depends on 13 the circumstances. You asked me a 14 hypothetical question. 15 So, again, and I'm not sure, 16 again, when we put the context of 17 diversion, what we're talking 18 about. 19 If a pharmacy has an 20 employee that was arrested for 21 diverting product, they put a 22 bottle in their pocket, the 23 reaction is going to be different. 24 So it all depends upon the</p>	<p style="text-align: right;">Page 240</p> <p>1 AmerisourceBergen would know about 2 diversion and not be obligated to act? 3 MR. NICHOLAS: Object to the 4 form. I think you're now just 5 arguing. 6 THE WITNESS: Again, it all 7 depends on the circumstances of 8 the case. 9 BY MR. PIFKO: 10 Q. Well, so, if it depends on 11 the circumstances, there must be 12 circumstances where AmerisourceBergen 13 would know of diversion and you don't 14 believe they would be required to act. 15 MR. NICHOLAS: Object to the 16 form. This isn't -- 17 MR. PIFKO: You've got to 18 stop. You have to stop. 19 You can object in a normal 20 objection way, you can say form. 21 You can say foundation. You can 22 state a legal objection. 23 But you are coaching the 24 witness. You have done</p>
<p style="text-align: right;">Page 239</p> <p>1 totality of the circumstance. 2 I can't give you a general 3 answer that if there's a pharmacy 4 that's diverting, depending upon 5 what that type of diversion is, 6 what that action will be. 7 BY MR. PIFKO: 8 Q. But you agree that some 9 action may be -- it depends on the nature 10 of the diversion -- the action would 11 depend on the nature of the diversion, 12 but some action would be required? 13 MR. NICHOLAS: Object to the 14 form. 15 THE WITNESS: It depends on 16 the circumstances. And, again, 17 it's a case-by-case basis, 18 depending upon the totality of the 19 circumstances, of what the 20 reaction would be. There isn't a 21 must. 22 BY MR. PIFKO: 23 Q. So is it your testimony that 24 there are circumstances where</p>	<p style="text-align: right;">Page 241</p> <p>1 textbook -- there is case law 2 addressing exactly what you're 3 doing in this district, and you 4 need to stop, okay? 5 MR. NICHOLAS: Listen. Now 6 you're going to let me speak for a 7 minute. 8 MR. PIFKO: No, I'm not. 9 You need to stop this right now. 10 MR. NICHOLAS: I read the 11 transcript of your defense of the 12 Merrill Gordon. 13 MR. PIFKO: We're not 14 talking about anything right now. 15 And all I did -- and all I did was 16 state my objections with clarity 17 and specificity. And I did not 18 coach the witness at one moment of 19 the deposition. 20 You are telling -- you said 21 things like "if you know." You 22 said that before the last break. 23 MR. NICHOLAS: Is that so 24 horrible?</p>

<p style="text-align: right;">Page 242</p> <p>1 MR. PIFKO: Because there's</p> <p>2 case law prohibiting that kind of</p> <p>3 conduct. That is directing the</p> <p>4 witness. If you know, that's</p> <p>5 directing the witness to say I</p> <p>6 don't know.</p> <p>7 You cannot do that. Just</p> <p>8 stop.</p> <p>9 MR. NICHOLAS:</p> <p>10 Unfortunately --</p> <p>11 MR. PIFKO: Am I going to</p> <p>12 get your agreement that you're</p> <p>13 going to comply with the law?</p> <p>14 MR. NICHOLAS: I've been</p> <p>15 complying with the law the entire</p> <p>16 time.</p> <p>17 I read your deposition.</p> <p>18 MR. PIFKO: You've been</p> <p>19 coaching the witness.</p> <p>20 MR. NICHOLAS: I have not.</p> <p>21 MR. PIFKO: You have.</p> <p>22 MR. NICHOLAS: I read your</p> <p>23 transcript of the Merrill</p> <p>24 Gordon --</p>	<p style="text-align: right;">Page 244</p> <p>1 AmerisourceBergen is aware of diversion,</p> <p>2 do you believe that beyond reporting it</p> <p>3 to the DEA, the company has a</p> <p>4 responsibility to take some action?</p> <p>5 A. It depends on the</p> <p>6 circumstances. We had an investigation,</p> <p>7 we were working with DEA, and they had</p> <p>8 diversion at a pharmacy and we were told</p> <p>9 to continue servicing them during the</p> <p>10 course of the investigation.</p> <p>11 There's an instance where we</p> <p>12 knew of diversion and we didn't take any</p> <p>13 action because we were working with the</p> <p>14 DEA.</p> <p>15 Every instance is different.</p> <p>16 You're asking me to give you a blanket</p> <p>17 response to situational instances. And I</p> <p>18 can't. There's -- no two are alike. And</p> <p>19 I can't give you a single answer to your</p> <p>20 response, because it depends.</p> <p>21 It depends. If DEA wants us</p> <p>22 to continue servicing them and there's a</p> <p>23 diversion, then we would have no action.</p> <p>24 Q. What pharmacy are you</p>
<p style="text-align: right;">Page 243</p> <p>1 MR. PIFKO: I never once</p> <p>2 said facts --</p> <p>3 MR. NICHOLAS: I never saw</p> <p>4 anything like it.</p> <p>5 MR. PIFKO: -- in my</p> <p>6 objections.</p> <p>7 MR. NICHOLAS: It was an</p> <p>8 incredible thing. I'm like Mother</p> <p>9 Teresa compared to you in that</p> <p>10 deposition.</p> <p>11 MR. PIFKO: I disagree.</p> <p>12 MR. NICHOLAS: I'm sure you</p> <p>13 do disagree.</p> <p>14 MR. PIFKO: We're moving on.</p> <p>15 You need to stop, okay?</p> <p>16 MR. NICHOLAS: I will</p> <p>17 continue to do exactly what I</p> <p>18 think is appropriate in this</p> <p>19 deposition, as needed.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. I'm trying to get an answer</p> <p>22 from you, and I'm just trying to</p> <p>23 understand what your testimony is, okay?</p> <p>24 So I've asked you if</p>	<p style="text-align: right;">Page 245</p> <p>1 referring to where there was diversion</p> <p>2 and the DEA told you to continue</p> <p>3 servicing them?</p> <p>4 MR. NICHOLAS: I'm going to</p> <p>5 caution the witness that if</p> <p>6 there's -- for any reason, this is</p> <p>7 an ongoing investigation and</p> <p>8 confidential --</p> <p>9 MR. PIFKO: He raised the</p> <p>10 issue.</p> <p>11 MR. NICHOLAS: I don't care.</p> <p>12 If it's confidential and he's not</p> <p>13 supposed to disclose the name of</p> <p>14 it for legal reasons, then he</p> <p>15 shouldn't do it.</p> <p>16 THE WITNESS: And it's some</p> <p>17 time ago and outside the scope.</p> <p>18 MR. PIFKO: You're not</p> <p>19 allowed to object to outside the</p> <p>20 scope, sir.</p> <p>21 MR. NICHOLAS: Well, he's</p> <p>22 not objecting.</p> <p>23 MR. PIFKO: He just said</p> <p>24 it's outside the scope.</p>

<p style="text-align: right;">Page 246</p> <p>1 MR. NICHOLAS: I don't know 2 that -- 3 MR. PIFKO: You're a fact 4 witness here as well as a 30(b)(6) 5 witness. You need to answer my 6 questions. 7 THE WITNESS: I don't know 8 the name of the pharmacy, but we 9 received recognition from the DEA 10 for participation in the 11 investigation. 12 BY MR. PIFKO: 13 Q. When was that? 14 A. It was 2002 or 2004, I can't 15 remember the time frame. 16 But after the course of the 17 investigation, the prosecution, we 18 received a certificate of recognition 19 from the DEA. That's the case I'm 20 referring to. 21 Q. So it was a concluded 22 investigation, correct? 23 A. Yes. 24 Q. Okay. Where was this</p>	<p style="text-align: right;">Page 248</p> <p>1 individuals. 2 You're asking me as a -- as 3 a -- this gets to the part of am I 4 a 3 -- what is it? 5 MR. NICHOLAS: 30(b)(6). 6 THE WITNESS: 30(b)(6) or me 7 personally. 8 BY MR. PIFKO: 9 Q. Do you know if that pharmacy 10 in New Jersey was put on the do not ship 11 list? 12 MR. NICHOLAS: Object to the 13 form. Outside the scope. 14 THE WITNESS: I don't know. 15 I don't know. 16 BY MR. PIFKO: 17 Q. I'm handing you what is 18 marked as Exhibit-8. 19 - - - 20 (Whereupon, Amerisource 21 Bergen-Zimmerman Exhibit-8, 22 ABDCMDL 00270533, was marked for 23 identification.) 24 - - -</p>
<p style="text-align: right;">Page 247</p> <p>1 pharmacy? What state? 2 A. It was in New Jersey. 3 Q. Okay. What type of pharmacy 4 was it? 5 A. I don't -- I mean, you're 6 talking about something that happened 16 7 years ago. I know we received a 8 recognition for participation in the 9 investigation. And, you know, I don't 10 know the name of the pharmacy. I don't 11 know the -- 12 Q. Can you recall any other 13 pharmacies where the DEA told you to 14 continue shipping to them despite knowing 15 about diversion? 16 A. I don't. 17 Q. So that's only happened, to 18 your knowledge, on one occasion? 19 MR. NICHOLAS: Object to the 20 form. 21 THE WITNESS: That I'm aware 22 of right now. And I'm not saying 23 that that hasn't occurred within 24 my department and with other</p>	<p style="text-align: right;">Page 249</p> <p>1 MR. PIFKO: For the record, 2 it's a single-page document Bates 3 labeled ABDCMDL 00270533. It's 4 dated Monday, August 7th, 2017. 5 BY MR. PIFKO: 6 Q. And I will represent to you 7 that the metadata that accompanied this 8 document says that it came from your 9 files, Mr. Zimmerman. 10 So please take a moment to 11 review it and let me know when you're 12 done. 13 A. Yes. 14 Q. Are you done? 15 A. I am. 16 Q. Okay. Do you recognize this 17 document? 18 A. I don't -- I guess it's a 19 document. 20 Q. Do you recall writing this? 21 A. It was notes, yes. 22 Q. What was it notes for? 23 A. I think I was -- for -- I 24 was probably meeting with somebody, so I</p>

<p style="text-align: right;">Page 250</p> <p>1 was just jotting down some points. 2 Q. BOD, is that board of 3 directors? 4 A. Board of -- where? 5 Q. It's on the subject line. 6 A. I think it was supposed to 7 be -- I'm not sure. I don't know if it 8 should have been BOP or BOD. Board of 9 Pharmacy. I'm not sure. I can't 10 remember. 11 Q. What would CS mean? 12 Controlled substances? 13 A. I don't recall. 14 Q. TPs, does that mean anything 15 to you? 16 A. I'm guessing -- if I had to 17 guess, I would say talking points. 18 Q. So it could be board of 19 directors, controlled substances, talking 20 points? 21 MR. NICHOLAS: Object to the 22 form. 23 THE WITNESS: I'm not sure. 24 - - -</p>	<p style="text-align: right;">Page 252</p> <p>1 a native PowerPoint dated or Bates number 2 ABDCMDL 00273425. 3 Going back to Exhibit-8. 4 You're the top person in 5 compliance, correct? 6 A. Yes. 7 Q. Do you -- in connection with 8 that role, do you meet regularly with the 9 board of directors? 10 A. I meet with a committee of 11 the board. 12 Q. How often do you meet with 13 them? 14 A. Once a quarter. 15 Q. Okay. And you've spoken 16 with them about diversion control? 17 A. Yes. 18 Q. Other than this meeting, 19 have you spoken with them about diversion 20 control on other occasions? 21 A. Yes. 22 Q. Is diversion control a 23 subject that you speak with them on every 24 meeting that you have?</p>
<p style="text-align: right;">Page 251</p> <p>1 (Whereupon, Amerisource 2 Bergen-Zimmerman Exhibit-9, 3 ABDCMDL 00273425, was marked for 4 identification.) 5 - - - 6 BY MR. PIFKO: 7 Q. I'm handing you what is 8 marked as Exhibit-9. 9 I'm not going to ask you any 10 questions about Exhibit-9 at the moment. 11 I just am asking if this refreshes your 12 recollection? 13 It's a PowerPoint, 14 regulatory compliance update, meeting of 15 the board of directors, dated August 10, 16 2017. And the subject line of your 17 e-mail is BOD, CS, TPs, 8/10/17. 18 So just as a question, does 19 this refresh your recollection as to what 20 BOD, CS, TPs 8/10/17 is? 21 A. It would appear to be for 22 this slide deck. 23 Q. We can put Exhibit-9 aside. 24 For the record, Exhibit-9 is</p>	<p style="text-align: right;">Page 253</p> <p>1 A. No. 2 Q. Would you say diversion 3 control is something that you regularly 4 talk about them with or only on specific 5 occasions? 6 A. Not regularly. 7 Q. Do you know what the purpose 8 of this meeting on August 10th, 2017 was? 9 MR. NICHOLAS: I'll object 10 at this point to the scope. This 11 doesn't fall within any of the 12 topics. And the time period is 13 off. 14 BY MR. PIFKO: 15 Q. Sir, did you hear the 16 question? 17 A. What was the question? 18 Q. The question was, do you 19 know what the purpose of this meeting on 20 August 10th, 2017 was? 21 A. I think there was a 22 regularly scheduled board meeting. 23 Q. But what I'm asking is, why 24 were you writing notes to present to them</p>

<p style="text-align: right;">Page 254</p> <p>1 on diversion control?</p> <p>2 MR. NICHOLAS: Objection.</p> <p>3 These are being answered in his</p> <p>4 individual capacity.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. To clean that up, all</p> <p>7 questions on this right now are in the</p> <p>8 individual capacity. I'll let you know</p> <p>9 when we're switching gears.</p> <p>10 A. To provide them update on</p> <p>11 our regulatory compliance.</p> <p>12 Q. But you said you don't meet</p> <p>13 with them regularly about diversion</p> <p>14 control.</p> <p>15 So what I was trying to</p> <p>16 understand was, why this meeting on</p> <p>17 diversion control at this time?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: We were</p> <p>22 updating them on the diversion</p> <p>23 control program.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 256</p> <p>1 back up.</p> <p>2 You have a sentence here</p> <p>3 that, The Controlled Substance Act,</p> <p>4 passed in 1970, is the statute</p> <p>5 establishing U.S. drug requirements for</p> <p>6 the storage and distribution of</p> <p>7 controlled substances as stipulated in</p> <p>8 the Code of Federal Regulations and</p> <p>9 enforced by the Drug Enforcement</p> <p>10 Administration.</p> <p>11 Primarily, you must have a</p> <p>12 DEA distributor registration to</p> <p>13 distribute controlled substances. You</p> <p>14 can only distribute controlled substances</p> <p>15 to a DEA-registered location. You must</p> <p>16 have adequate controls in place to</p> <p>17 prevent diversion; cages, vaults, alarms,</p> <p>18 background checks, et cetera. And, you</p> <p>19 must have a system to identify suspicious</p> <p>20 orders and report those orders to DEA</p> <p>21 when discovered.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. It says, These requirements</p>
<p style="text-align: right;">Page 255</p> <p>1 Q. You said there's a committee</p> <p>2 that you -- that you meet with.</p> <p>3 Is there a name for this</p> <p>4 committee?</p> <p>5 A. It's the audit committee.</p> <p>6 Q. How many members of the</p> <p>7 board of directors sit on that committee?</p> <p>8 A. I believe it's four.</p> <p>9 Q. Do you know which specific</p> <p>10 individuals?</p> <p>11 A. The names?</p> <p>12 Q. Yes.</p> <p>13 A. Lon Greenberg, David Durkin.</p> <p>14 And they just changed this last quarter,</p> <p>15 so I'm not sure if Mike Long is still on</p> <p>16 the committee or not. Mike Long. And I</p> <p>17 can't think of the other.</p> <p>18 Q. Okay. Let's go back to</p> <p>19 Exhibit-8.</p> <p>20 I do want to -- for the</p> <p>21 record to be clear, I'm asking you this</p> <p>22 as a 30(b)(6) witness.</p> <p>23 You state here, These</p> <p>24 requirements -- well, actually, let's</p>	<p style="text-align: right;">Page 257</p> <p>1 have gone unchanged for the past 45</p> <p>2 years.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you agree with that</p> <p>6 statement? You wrote it.</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: I did write --</p> <p>10 yes, I wrote it.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. And you agree with it?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. At the bottom here, it says,</p> <p>18 In 2014, ABC -- and we haven't talked</p> <p>19 about that on the record, but ABC refers</p> <p>20 to AmerisourceBergen Corporation,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. It says, ABC</p> <p>24 voluntarily -- and there's more to the</p>

<p style="text-align: right;">Page 258</p> <p>1 sentence, you can read it.</p> <p>2 But my question to you is,</p> <p>3 did AmerisourceBergen voluntarily take on</p> <p>4 certain activities with respect to</p> <p>5 controlling diversion that it didn't</p> <p>6 believe were in the statute?</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: No. We were</p> <p>10 just enhancing our program, as</p> <p>11 I -- as it has stated.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. But by enhancing your</p> <p>14 program, is it your position that you</p> <p>15 voluntarily undertook to engage in</p> <p>16 certain activities that you weren't</p> <p>17 required to do under the statute?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: The</p> <p>21 regulations designed a program to</p> <p>22 identify and report suspicious</p> <p>23 orders. We had that in place. We</p> <p>24 still have it in place. We had it</p>	<p style="text-align: right;">Page 260</p> <p>1 about in this document?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form. Outside the scope of the</p> <p>4 notice, I think. It's not in any</p> <p>5 of the topics.</p> <p>6 But go ahead.</p> <p>7 THE WITNESS: I think,</p> <p>8 through my discussions here today,</p> <p>9 we've shown from 1990 through now,</p> <p>10 we always -- we've always been</p> <p>11 working to improve our program.</p> <p>12 And we started with '96, then '98.</p> <p>13 And we've always continued, even</p> <p>14 between '98 and 2007, there were</p> <p>15 enhancements to the program.</p> <p>16 There was enhancements from 2007</p> <p>17 forward. And we continue to</p> <p>18 enhance the program.</p> <p>19 We're not -- this is a note</p> <p>20 I wrote in order to remind me to</p> <p>21 talk about the enhancements to the</p> <p>22 program that we continue to do.</p> <p>23 And that's what this document is,</p> <p>24 is just my notes as a reminder to</p>
<p style="text-align: right;">Page 259</p> <p>1 in place before and after any</p> <p>2 enhancements.</p> <p>3 The enhancements were just</p> <p>4 done about how we identified --</p> <p>5 and how the process worked. We</p> <p>6 didn't -- a requirement never</p> <p>7 changed. And our program really</p> <p>8 never changed. Just some of the</p> <p>9 mechanisms, some of the data that</p> <p>10 we were receiving to provide, you</p> <p>11 know, more in-depth, line-of-sight</p> <p>12 when reviewing orders, those type</p> <p>13 of things, we continued to enhance</p> <p>14 our program.</p> <p>15 But the program itself of</p> <p>16 having a program to identify an</p> <p>17 order of interest, review the</p> <p>18 order, determine whether it's</p> <p>19 suspicious, and if we determined</p> <p>20 it's suspicious reporting it into</p> <p>21 the DEA, that's never changed.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. Why undertake voluntarily --</p> <p>24 voluntary enhancements, as you're talking</p>	<p style="text-align: right;">Page 261</p> <p>1 just make sure I hit certain</p> <p>2 points.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. Do you believe that</p> <p>5 AmerisourceBergen has any duties to</p> <p>6 prevent diversion outside of the</p> <p>7 regulations under The Controlled</p> <p>8 Substances Act?</p> <p>9 MR. NICHOLAS: Object to the</p> <p>10 form. Not within the scope of</p> <p>11 the -- I don't know if you're</p> <p>12 asking him as an individual or</p> <p>13 under the 30(b)(6) thing, but it's</p> <p>14 not covered by 30(b)(6) topics.</p> <p>15 I'll object to it.</p> <p>16 THE WITNESS: I think we</p> <p>17 have a responsibility to comply</p> <p>18 with the federal regulations and</p> <p>19 state Board of Pharmacy</p> <p>20 regulations as it respects to the</p> <p>21 handling, storage and distribution</p> <p>22 of controlled substances.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. But do you believe that</p>

<p style="text-align: right;">Page 262</p> <p>1 there's any other requirements to prevent 2 diversion outside of The Controlled 3 Substances Act or State Pharmacy Board 4 rules? 5 MR. NICHOLAS: Object to the 6 form. Same objection I just 7 stated. 8 THE WITNESS: I'm not aware 9 of any other requirements. 10 BY MR. PIFKO: 11 Q. Does AmerisourceBergen 12 undertake any actions to prevent 13 diversion for reasons beyond what is 14 required in The Controlled Substances 15 Act? 16 MR. NICHOLAS: Object to the 17 form. Outside the scope. And I 18 don't understand the question. 19 And I don't know if the witness 20 does. 21 THE WITNESS: Can you state 22 that one more time, please? 23 BY MR. PIFKO: 24 Q. Does AmerisourceBergen</p>	<p style="text-align: right;">Page 264</p> <p>1 place to comply with the 2 regulations. 3 I don't know of any other 4 requirements outside than the 5 Board of Pharmacy and the DEA 6 requirements that you're referring 7 to. 8 BY MR. PIFKO: 9 Q. All I'm asking, so you just 10 said you had processes in place to comply 11 with the regulations, agreed? 12 A. Yes. 13 Q. Do you have processes in 14 place that are -- to prevent diversions 15 that are for reasons that aren't required 16 under the statute -- 17 MR. NICHOLAS: Objection. 18 BY MR. PIFKO: 19 Q. -- the federal statute? 20 MR. NICHOLAS: Object to the 21 form. Same objections. 22 THE WITNESS: I think all of 23 our processes all work back to the 24 federal regulations.</p>
<p style="text-align: right;">Page 263</p> <p>1 undertake any actions to prevent 2 diversion for reasons beyond what is 3 required in The Controlled Substance Act? 4 MR. NICHOLAS: All the same 5 objections. 6 Go ahead. 7 THE WITNESS: Most -- our 8 processes are formulated around 9 the controlled -- not The 10 Controlled Substance Act, but the 11 Code of Federal Regulations. And 12 all the processes that we go 13 through are to support those 14 regulations. 15 BY MR. PIFKO: 16 Q. So AmerisourceBergen doesn't 17 engage in any diversion-related processes 18 for reasons outside of the Code of 19 Federal Regulations? 20 MR. NICHOLAS: Objection to 21 the form of the question. 22 THE WITNESS: I'm not 23 understanding your question. 24 I mean, we have processes in</p>	<p style="text-align: right;">Page 265</p> <p>1 BY MR. PIFKO: 2 Q. This document, Exhibit-8, 3 says, In 2007, working with FDA as a 4 result of the suspension of our Orlando 5 DEA registration for sales practices to 6 Internet pharmacies, ABC enhanced its 7 program once again by -- and then it's 8 got four items listed there. 9 Do you see that? 10 A. Yes. 11 Q. Is that an accurate 12 recitation of what AmerisourceBergen did 13 as a result of the suspension of its DEA 14 registration? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: Yes. 18 BY MR. PIFKO: 19 Q. It says here that -- Number 20 4 says that, Amerisource completely 21 changed their order monitoring process to 22 include holding and not shipping any 23 order that exceeded that pharmacy's peer 24 group threshold.</p>

<p style="text-align: right;">Page 266</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And then it says, ABC was</p> <p>4 the first company in the industry to</p> <p>5 implement an SO hold, which is now the</p> <p>6 standard in the industry and a component</p> <p>7 for every distributor's SOM program.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. SO, I assume, means</p> <p>11 suspicious order?</p> <p>12 A. I would assume that's what</p> <p>13 it meant. It's an order of interest</p> <p>14 hold, suspicious order hold.</p> <p>15 Q. And SOM means suspicious</p> <p>16 order monitoring?</p> <p>17 A. Yes.</p> <p>18 Q. You testified earlier that</p> <p>19 there's -- AmerisourceBergen does not</p> <p>20 believe it's obligated under the law to</p> <p>21 not ship an order that's suspicious.</p> <p>22 Do you recall saying that?</p> <p>23 MR. NICHOLAS: Object to the</p> <p>24 form.</p>	<p style="text-align: right;">Page 268</p> <p>1 negotiations with DEA. They wanted us to</p> <p>2 come up with a program.</p> <p>3 And two key components of</p> <p>4 that program is they wanted us to have an</p> <p>5 enhanced due diligence, and then the</p> <p>6 other one was to change the process of</p> <p>7 shipping orders and reporting them after</p> <p>8 the fact.</p> <p>9 And that was through the</p> <p>10 negotiations. And we implemented that</p> <p>11 program. That was the program I</p> <p>12 indicated that DEA came in and inspected.</p> <p>13 And whether they approved it or not,</p> <p>14 based upon their inspections, I think in</p> <p>15 the order, it states if we weren't in</p> <p>16 compliance, then they would not return</p> <p>17 our license back to us.</p> <p>18 And then a couple of months</p> <p>19 later, they had us -- had me do a</p> <p>20 presentation at their DEA conference to</p> <p>21 industry going through these processes.</p> <p>22 Q. You say that</p> <p>23 AmerisourceBergen was the first company</p> <p>24 in the industry to implement such a</p>
<p style="text-align: right;">Page 267</p> <p>1 THE WITNESS: Can you</p> <p>2 restate that again? I'm not sure</p> <p>3 I understood it correctly.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. I believe I understood your</p> <p>6 testimony earlier to say that you did not</p> <p>7 believe that AmerisourceBergen is</p> <p>8 required, under the law, to not ship an</p> <p>9 order that it identifies as suspicious;</p> <p>10 is that correct?</p> <p>11 A. My statement was that the</p> <p>12 regulation itself states that you must</p> <p>13 operate a system to identify and report a</p> <p>14 suspicious order. There's no statement</p> <p>15 of shipping, not shipping, holding an</p> <p>16 order.</p> <p>17 Q. So at this time, what was</p> <p>18 the reason that you implemented the</p> <p>19 shipping -- or suspicious order hold,</p> <p>20 which you said includes the orders of</p> <p>21 interest?</p> <p>22 A. Because we wouldn't have</p> <p>23 gotten our DEA registration back without</p> <p>24 implementing that process in our</p>	<p style="text-align: right;">Page 269</p> <p>1 process of holding a suspicious order.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. What's the basis for that?</p> <p>5 A. Based upon my discussions</p> <p>6 with DEA in 2007.</p> <p>7 Q. You're aware that there's an</p> <p>8 opioid crisis in America, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did AmerisourceBergen ever,</p> <p>11 at any point, think to itself, could we</p> <p>12 do more to prevent diversion as a result</p> <p>13 of the opioid crisis?</p> <p>14 MR. NICHOLAS: Object to the</p> <p>15 form. It's outside the scope as</p> <p>16 well.</p> <p>17 THE WITNESS: And I'm not</p> <p>18 sure I understand the time frame</p> <p>19 you're talking about.</p> <p>20 We always want to make sure</p> <p>21 that we're following the</p> <p>22 appropriate policy and procedures</p> <p>23 and working with DEA on these</p> <p>24 issues, you know, whether it's</p>

Page 270	Page 272
<p>1 methamphetamine abuse or any other 2 area. 3 And in the past, we had a 4 great working relationship with 5 the DEA to resolve these issues. 6 When it was methamphetamine, they 7 passed a bill, enacted regulations 8 and requirements, as we talked 9 about, with the handling. 10 But in the opioid crisis, 11 there's no implementation of 12 bills, there was no -- there was 13 no input from DEA like they had in 14 past crises, for the opioid 15 crisis. 16 We worked with DEA in 2007. 17 We felt we built a program that 18 was, again, I think, 19 state-of-the-art in the industry. 20 And that was the program we 21 implemented. 22 We shared our program with 23 all the other industry 24 memberships. It wasn't -- we were</p>	<p>1 do that to enhance our program, we 2 do. It's not -- it's not static. 3 We don't just implement it in 2007 4 and there's just no changes. It's 5 a constant. 6 BY MR. PIFKO: 7 Q. Right. But I'm asking if 8 you had a specific discussion about 9 changing or adding to the program as a 10 result of issues stemming from the opioid 11 crisis? 12 MR. NICHOLAS: Object to the 13 form. You're arguing. 14 THE WITNESS: I don't know 15 if there was a specific meeting 16 titled exactly how you're stating 17 it. No, I don't know. 18 BY MR. PIFKO: 19 Q. Okay. I told you I would 20 ask you the question a different way. 21 Now as an individual -- or 22 as the chief compliance officer and the 23 head of the CSRA, are you aware of any 24 conversations, at any time when you</p>
Page 271	Page 273
<p>1 open about our process. And, you 2 know, I think that, on itself, 3 shows the efforts of 4 AmerisourceBergen. 5 BY MR. PIFKO: 6 Q. I'm going to ask this 7 question two different ways. 8 First, from -- for the 9 30(b)(6) period of the deposition, the 10 time period, are you aware of any 11 meetings where the company discussed the 12 opioid crisis and what steps it could 13 take to improve its diversion control 14 measures to address those issues? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: We 18 regularly -- the department 19 regularly meets and discusses our 20 programs and processes and what we 21 do at the distribution centers, 22 but also with this program as 23 well. And it's open dialogue. 24 And if there's areas we can</p>	<p>1 worked at the company, where there was 2 discussion of improving diversion control 3 measures specifically in response to the 4 opioid crisis? 5 MR. NICHOLAS: Object to the 6 form. 7 THE WITNESS: As I 8 previously stated, there is always 9 discussions about our program and 10 our processes, not just with the 11 suspicious order monitoring but 12 how we handled things across the 13 scope of the distribution center 14 and all of our requirements. 15 So you're asking me, did 16 have -- can I point to one 17 specific meeting? Not that I'm 18 aware of. But it was a topic that 19 we generally discussed. 20 VIDEO TECHNICIAN: Going off 21 the record. 2:01 p.m. 22 - - - 23 (Whereupon, a brief recess 24 was taken.)</p>

Page 274

1 - - -

2 MR. NICHOLAS: Counsel

3 produced -- showed us a copy of

4 what has been marked as Exhibit-9

5 in this deposition. The cover

6 page says, Regulatory Compliance

7 Update, and the document is dated

8 August 10th of 2017.

9 This document was produced

10 in its entirety by mistake. It

11 is -- there are portions of it

12 that are privileged. We are going

13 to redact the document now so that

14 it retains the cover page and

15 Pages 11 through 18. The balance

16 of the document is privileged.

17 Counsel for the other side

18 has agreed, not only not to pursue

19 anything on those other pages, but

20 also to redact and return the

21 privileged pages, which we

22 appreciate.

23 And I think that completes

24 the record.

Page 275

1 Let me just check with my

2 people to make sure I'm not

3 missing something, okay?

4 We are all good. We can

5 proceed.

6 VIDEO TECHNICIAN: We're

7 back on the video record. The

8 time is 2:15 p.m.

9 BY MR. PIFKO:

10 Q. Let's go back to Exhibit-9.

11 I want to direct your

12 attention to Page 16. Tell me when

13 you're there.

14 A. Yep. Yes.

15 Q. This is a PowerPoint

16 presentation and the language below are

17 comments.

18 Do you see that? There's

19 comments in black and comments in red.

20 Do you recall writing the

21 comments?

22 A. No.

23 Q. Did you put this PowerPoint

24 presentation together or did someone do

Page 276

1 it at your direction?

2 MR. NICHOLAS: Object to the

3 form.

4 THE WITNESS: I don't

5 believe it was me.

6 BY MR. PIFKO:

7 Q. Do you believe that David

8 May could have put this together for you?

9 MR. NICHOLAS: Go ahead.

10 THE WITNESS: He could have.

11 BY MR. PIFKO:

12 Q. This is talking about

13 program enhancements on the slide.

14 Do you see that?

15 A. Yes.

16 Q. On the slide itself.

17 A. So I'm clear, is this my

18 capacity as an individual? Because it's

19 outside the scope of what I prepared for

20 on the --

21 Q. Well, I'm asking you as an

22 individual -- well, and I'm going to --

23 it's going to be related to everything.

24 So your counsel can object

Page 277

1 as he deems to be appropriate once he

2 hears the questions.

3 So it says in the red, just

4 below the note section -- do you see

5 that?

6 A. Yes.

7 Q. -- per Eric.

8 Who is Eric?

9 A. I am not sure. It could be

10 an attorney.

11 Q. Is there someone Eric on the

12 board of directors?

13 A. No.

14 Q. Is there someone Eric on

15 your staff?

16 A. There is an Eric on my

17 staff.

18 Q. Which Eric?

19 A. There's an Eric Cherveney in

20 our group.

21 Q. What's Eric's job at this

22 time, in 2017?

23 A. Eric is the director of

24 diversion control, I believe is his

<p style="text-align: right;">Page 278</p> <p>1 title.</p> <p>2 Q. So he's the head of the</p> <p>3 diversion control division of the CSRA?</p> <p>4 A. No. David May is the head.</p> <p>5 Q. Oh, director -- so director</p> <p>6 is not the top position.</p> <p>7 What's David May's title?</p> <p>8 A. David May is vice president.</p> <p>9 Q. So Eric, I'm going to</p> <p>10 butcher his name, Cherveney -- did I get</p> <p>11 it right?</p> <p>12 A. Cherveney.</p> <p>13 Q. Cherveney.</p> <p>14 He's below -- just below</p> <p>15 David May?</p> <p>16 A. Correct.</p> <p>17 Q. And he's in charge of --</p> <p>18 he's the director of the diversion</p> <p>19 control program for the company?</p> <p>20 A. Correct.</p> <p>21 Q. It says here, We are trying</p> <p>22 to make the best decisions we can to</p> <p>23 protect the public while assuring legit</p> <p>24 customers get their meds. That is all</p>	<p style="text-align: right;">Page 280</p> <p>1 the notes.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. So you don't necessarily</p> <p>4 agree with that?</p> <p>5 A. I think I stated -- I'll</p> <p>6 state -- I agree that we have a -- we</p> <p>7 have a responsibility to assure that we</p> <p>8 have adequate controls in place to</p> <p>9 protect against diversion and we have a</p> <p>10 duty to ensure that legitimate patients</p> <p>11 have access to much needed medications.</p> <p>12 Q. It says here -- it mentions</p> <p>13 a civil action in Georgia.</p> <p>14 Do you see that? In the</p> <p>15 note at the top.</p> <p>16 A. I see that.</p> <p>17 Q. Do you know what action that</p> <p>18 is?</p> <p>19 A. I do not.</p> <p>20 Q. Do you recall discussing</p> <p>21 that the diversion control function of</p> <p>22 the company is concerned with making</p> <p>23 decisions to protect the public with Mr.</p> <p>24 May?</p>
<p style="text-align: right;">Page 279</p> <p>1 the diversion control function is</p> <p>2 concerned with.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you agree with that</p> <p>6 statement?</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 But go ahead.</p> <p>10 THE WITNESS: I agree our</p> <p>11 struggle is to assure that</p> <p>12 legitimate customers get their</p> <p>13 medications while assuring that we</p> <p>14 report suspicious orders.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. And protecting the public</p> <p>17 while, at the same time, assuring legit</p> <p>18 customers get their meds?</p> <p>19 MR. NICHOLAS: Same</p> <p>20 objection.</p> <p>21 THE WITNESS: I mean, it</p> <p>22 goes back to -- it goes back to</p> <p>23 the earlier discussion, that those</p> <p>24 are the words that they wrote in</p>	<p style="text-align: right;">Page 281</p> <p>1 MR. NICHOLAS: Object to the</p> <p>2 form.</p> <p>3 THE WITNESS: Can you state</p> <p>4 your question again?</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. Well, this idea, We are</p> <p>7 trying to make the best decisions we can</p> <p>8 to protect the public while assuring</p> <p>9 legit customers get their meds. That is</p> <p>10 all the diversion control function is</p> <p>11 concerned with.</p> <p>12 That sentence, I'm asking if</p> <p>13 you discussed that -- concepts in that</p> <p>14 sentence with Mr. May?</p> <p>15 A. Not specifically as worded</p> <p>16 here.</p> <p>17 Q. Do you remember discussing</p> <p>18 protection of the public and the</p> <p>19 diversion control function with Mr. May?</p> <p>20 A. We have many discussions</p> <p>21 about our -- how the program -- how the</p> <p>22 program works and our obligation to</p> <p>23 the -- make sure we're in compliance but</p> <p>24 also our obligation to make sure</p>

<p style="text-align: right;">Page 282</p> <p>1 legitimate patients have access to 2 medications. 3 Q. Did Mr. May ever tell you 4 that he believes the diversion control 5 function is concerned with protecting the 6 public? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: I don't 10 recall. 11 BY MR. PIFKO: 12 Q. How about Eric Cherveney, did 13 he ever discuss the diversion control 14 function and it being concerned with 15 protecting the public? 16 A. I don't recall any 17 conversation to that, no. 18 MR. NICHOLAS: Object to the 19 form. 20 BY MR. PIFKO: 21 Q. It says here, We may have to 22 get pretty specific with how we revise 23 the forms to assuage any concern they may 24 have that we are justifying the Short</p>	<p style="text-align: right;">Page 284</p> <p>1 Bergen-Zimmerman Exhibit-10, 2 ABDCMDL 00000099-100, was marked 3 for identification.) 4 - - - 5 BY MR. PIFKO: 6 Q. I'm handing you what is 7 marked as Exhibit-10. It's a two-page 8 document Bates labeled ABDCMDL 00000099 9 and 100. 10 I'll represent to you that 11 the metadata showed June 30th, 2007 as 12 the date for this. 13 A. What date? I'm sorry. 14 Q. June 30th, 2007. 15 Let me know when you're done 16 reviewing it. 17 A. And you said this is from 18 June? 19 Q. I believe that's what the 20 metadata says. 21 A. All right. 22 Q. Are you familiar -- 23 A. 2007. 24 Q. -- with this document?</p>
<p style="text-align: right;">Page 283</p> <p>1 Form 590. 2 Do you see that? 3 A. Where are you? Are you on 4 the same side? 5 Q. Same page. 6 A. Where in the note text? 7 Q. Second red paragraph. 8 A. I see that. 9 Q. What's the Short Form 590? 10 Was there a discussion about shortening 11 the form? 12 A. I don't know. I don't 13 recall. These aren't my notes written on 14 here. 15 Q. Did you give this 16 presentation to the board about -- I 17 believe it's titled, CSRA Diversion 18 Control? 19 A. I believe David May did. 20 Q. Were you present at the 21 presentation? 22 A. Yes. 23 - - - 24 (Whereupon, Amerisource</p>	<p style="text-align: right;">Page 285</p> <p>1 A. I can't recall specifically 2 the document. 3 Q. Do you recall having 4 guidelines for threshold reviews? 5 A. Yes. 6 Q. Does this appear to be a 7 true and correct representation of 8 guidelines for threshold reviews for 9 which you were familiar? 10 MR. NICHOLAS: Object to the 11 form. 12 THE WITNESS: At the time in 13 June of 2007? Yes. 14 BY MR. PIFKO: 15 Q. It says at the bottom, Based 16 upon past sales data of retail 17 pharmacies, controlled substance 18 purchases account for approximately [REDACTED] 19 percent of the average retail pharmacy's 20 total purchases from AmerisourceBergen 21 Corporation. 22 Do you see that? 23 A. Yes. 24 Q. Then it says, Based upon</p>

<p style="text-align: right;">Page 286</p> <p>1 sales volume and controlled substances, 2 CS ratio, CSRA has been able to place all 3 retail pharmacy accounts into one of four 4 categories, which determines how CSRA 5 will approach adjustments to the 6 account's established threshold levels. 7 Do you see that? 8 A. Yes. 9 Q. Do you recall having 10 stratifications for threshold levels 11 based on the controlled substances ratio? 12 A. I'm sorry, your question is, 13 again? I'm sorry. 14 Q. Do you recall having 15 stratifications for threshold levels 16 based on controlled substances ratios? 17 A. The thresholds were based 18 upon the size of the customer. 19 Q. This talks about adjustments 20 to the account's threshold levels based 21 on the dollar volume and the controlled 22 substances ratio. 23 A. Yes. So this document was 24 in June, keep in mind the time frame,</p>	<p style="text-align: right;">Page 288</p> <p>1 a look at the thresholds to better gauge 2 them for the customer and their business. 3 Again, with the intent of 4 ensuring that customers that had 5 legitimate medical need for the product 6 was able to get it. 7 Q. Let's look at the fourth 8 category. 9 These are customers that 10 have low-dollar volume, high-controlled 11 substances ratio. 12 Do you see that? 13 A. Yes. 14 Q. It says, Customers in this 15 category are generally secondary accounts 16 and account for the majority of the OMP 17 issues. 18 Do you see that? 19 A. I see that. 20 Q. Do you know what that means? 21 A. That means that you could 22 have a customer, it could be a large 23 account -- so in the distribution 24 environment, most pharmacies have</p>
<p style="text-align: right;">Page 287</p> <p>1 this is in the middle of our 2 negotiations. So we haven't signed off 3 on our new program. 4 So in order to first get it 5 up and running, we had to take just a 6 quick swath of our total customer base 7 and make four categories. So we threw 8 all the customers into those four 9 categories based on volume, not anything 10 else. 11 And then we had this 12 guideline, said take a look now and 13 further -- get more scientific with the 14 customers to make sure they were 15 appropriately sized, and their thresholds 16 were created. 17 And so, again, this would be 18 something that we would have been working 19 with DEA as we went through this process. 20 And so once we first got the customers in 21 their class, just based on dollar volume, 22 the average pharmacy is ■ percent, 23 unless it had some, you know, other 24 areas. So then we went through and took</p>	<p style="text-align: right;">Page 289</p> <p>1 multiple accounts and -- just in the 2 event that they need product that their 3 primary distributor can't distribute, or 4 in the effect that they have different 5 pricing structures on different products 6 from different distributors. So they 7 have more than one account. 8 So if you had a large 9 account that was a small dollar volume -- 10 I mean, it could be a \$2 million account, 11 for us it might be a \$10,000 account, 12 because it's secondary, but it's a 13 million-dollar operation and they're 14 buying higher level controls, they're 15 going to hit on the OMP. 16 And that's what's referenced 17 to a low-dollar high-ratio secondary 18 account. 19 Q. And so when you say "hit on 20 the OMP," because you mentioned this 21 paragraph we were at on the first page, 22 about the ■ percent ratio of controlled 23 substances to total volume -- 24 A. That's for a regular -- so</p>

Page 290

1 if a pharmacy buys 100 percent of their
 2 purchases, in this average, at that time,
 3 ■ percent, if you have a secondary
 4 account, they might be buying
 5 different -- disproportionate --
 6 disproportionate amount of percentages
 7 from different distributors, but their
 8 overall purchase is going to be ■
 9 percent.
 10 Q. Right.
 11 A. Does that explain that?
 12 Q. So there's a statement here,
 13 Sales, the VP/DCM, and potentially the
 14 RVP, should closely evaluate the business
 15 decision to service these accounts.
 16 First question, VP/DCM, who
 17 are those people?
 18 A. That's the distribution
 19 center manager.
 20 Q. VP, who is that?
 21 A. That's their title.
 22 Q. That's one title, okay.
 23 So that's the top person at
 24 any particular distribution center?

Page 291

1 A. Correct.
 2 Q. Regional vice president,
 3 what would that refer to here?
 4 A. Regional vice president for
 5 distribution.
 6 Q. Okay. Is that -- that
 7 person's above the specific distribution
 8 center?
 9 A. Yeah, so the distribution
 10 center -- the VP/DCM is of the
 11 distribution center. And then RVP may
 12 have four or five distribution centers
 13 under them.
 14 Q. So they're talking about a
 15 business decision to service these
 16 accounts.
 17 Do you see that?
 18 A. Yes.
 19 Q. Why would they be having a
 20 business decision about whether they want
 21 to service these accounts?
 22 MR. NICHOLAS: Object to the
 23 form.
 24 THE WITNESS: Whether they

Page 292

1 want to be a secondary supply to
 2 these accounts. I mean, it's a
 3 business decision.
 4 What's the dollar volume of
 5 their purchasing? Is it -- do
 6 they want to continue business
 7 with them?
 8 BY MR. PIFKO:
 9 Q. Why wouldn't you want to
 10 continue business with them?
 11 MR. NICHOLAS: Object to the
 12 form.
 13 THE WITNESS: Because it
 14 depends upon how much volume
 15 they're purchasing. So, you know,
 16 just to have a pharmacy account,
 17 you need to purchase a certain
 18 level of volume, just to break
 19 even because of the pick, pack,
 20 ship process and overhead
 21 operating cost.
 22 So just because a pharmacy
 23 does \$10,000 worth of business, it
 24 may cost you \$50,000 to carry it.

Page 293

1 So there's a business decision
 2 depending, is it a secondary
 3 account, because we may be getting
 4 all their business or is it a
 5 secondary account that we're
 6 servicing them in the event they
 7 need product? That's the business
 8 decision.
 9 BY MR. PIFKO:
 10 Q. When you say it's a
 11 secondary account, we may be getting all
 12 their business, what do you mean?
 13 They're just a small account?
 14 A. No, no, no. If they are a
 15 secondary account, they're not getting
 16 all -- they're secondary with us, so
 17 they're only getting a small portion of
 18 our business.
 19 So they need to make a
 20 decision -- again, I don't know if
 21 they're profitable, maybe they are, maybe
 22 they're not. There's a business
 23 decision.
 24 Q. It says here, under Item B,

<p style="text-align: right;">Page 294</p> <p>1 Is AmerisourceBergen Corporation 2 assisting/enabling its competitors to 3 retain primary accounts by providing 4 these accounts with, quote, high-risk 5 controlled substances because the primary 6 distributor has limited the account's 7 controlled substances quantities to limit 8 its exposure. 9 Do you see that? 10 A. Yes. 11 Q. Do you have any 12 understanding what that's about? 13 A. That's a question. Yes. 14 Q. Is that a consideration that 15 Amerisource looks at when they're looking 16 at the dollar volume and controlled 17 substances ratio of certain accounts? 18 MR. NICHOLAS: Object to the 19 form. 20 THE WITNESS: As I 21 indicated, the decision is, if 22 they are a secondary account, why 23 are they a secondary account? And 24 what products are we supplying</p>	<p style="text-align: right;">Page 296</p> <p>1 form. 2 THE WITNESS: No. I think I 3 stated that they are a secondary 4 account. And there's a question, 5 it's not a statement, it's a 6 question of whether that's -- 7 that's occurring. I don't know. 8 These are licensed 9 pharmacies that we're secondary 10 because most -- a lot of our 11 primary customers may have a 12 secondary account. That's just 13 the nature of the industry in the 14 supply chain. 15 BY MR. PIFKO: 16 Q. Right. So I'm not saying 17 that that is occurring. 18 I'm just saying that that's 19 what this is addressing; it's saying if 20 there's an account that's a low-dollar 21 account and they're buying a lot of 22 controlled substances, one consideration 23 we should have is if we're helping a 24 competitor account -- or the primary</p>
<p style="text-align: right;">Page 295</p> <p>1 them? And it's a business 2 decision whether we want to 3 continue. 4 We're not raising their 5 threshold. We're not -- you know, 6 they're not -- we're not diverting 7 product. So it's a business 8 decision of whether they want to 9 maintain these customers. It's as 10 simple as that. 11 BY MR. PIFKO: 12 Q. The way I read this, it 13 seems to me like they're saying, if we're 14 going to service this low-dollar, 15 high-volume controlled substances 16 account, they could be a primary customer 17 of another distributor and we're helping 18 them buy more controlled substances and 19 do we want to do that? 20 MR. NICHOLAS: Object to the 21 form. 22 BY MR. PIFKO: 23 Q. Do you agree with that? 24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 297</p> <p>1 account of a competitor, are we helping 2 them buy more controlled substances? We 3 should think about that if we're going to 4 service this account. 5 MR. NICHOLAS: Objection. 6 BY MR. PIFKO: 7 Q. Do you agree that that's 8 what they're asking? 9 MR. NICHOLAS: Object to the 10 form. 11 THE WITNESS: Again, it's a 12 question. It's not a statement. 13 Again, it's just something 14 that's listed here as a question. 15 If it's a secondary account, is it 16 an account we want to continue 17 servicing because we're going to 18 retain the business, or is it a 19 secondary account that we're not 20 going to -- we're not going to 21 continue servicing as secondary 22 because we're not going to get the 23 business? 24 BY MR. PIFKO:</p>

<p style="text-align: right;">Page 298</p> <p>1 Q. But -- okay. I agree A 2 says, Is there a potential to transition 3 this secondary account to primary? 4 Agree. It sounds like 5 they're saying, can this customer become 6 a primary customer, maybe that's a reason 7 we want to work with them. 8 But B, I'm not saying a 9 specific instance, I'm just asking you, 10 it appears that what they're asking -- 11 they're talking about limiting -- a 12 competitor wanting to maybe limit its 13 exposure by having this customer buy from 14 you. 15 And I'm just asking, is that 16 what they're -- is that a risk that the 17 company is looking at here when they're 18 considering this issue? 19 MR. NICHOLAS: Object to the 20 form. 21 THE WITNESS: It doesn't 22 have anything to do -- it doesn't 23 have anything to do with the 24 competitor. It has to do with the</p>	<p style="text-align: right;">Page 300</p> <p>1 That's what the consideration is here. 2 MR. NICHOLAS: Object to the 3 form. We're kind of going round 4 and round. 5 THE WITNESS: Again, the 6 consideration is not that -- and 7 we don't know if the primary is 8 limiting their controls. All we 9 know is we have a secondary 10 account that is buying a high 11 volume of controls, which could be 12 because they're buying less 13 controls from our competitor, and 14 is that the account -- the kind of 15 account we want as a secondary 16 account? 17 BY MR. PIFKO: 18 Q. Let me ask you a different 19 question. 20 If you knew that an account 21 was buying controls from you to skirt 22 thresholds set by one of your 23 competitors, is that an account you would 24 want to service?</p>
<p style="text-align: right;">Page 299</p> <p>1 customer. 2 They may be choosing to buy 3 their controlled substances from 4 us versus our competitor 5 because -- for whatever reason. 6 So I don't want you to read 7 too much into that, other than the 8 fact that this question is, is 9 this an area that they're buying 10 their controls from us while 11 buying non-controls from another 12 one. 13 And if that's the case, is 14 that -- is that what we want to 15 do? Do we want to service that 16 account? 17 BY MR. PIFKO: 18 Q. Right. Because I'm 19 literally reading the document. It says, 20 Is AmerisourceBergen assisting/enabling 21 its customers? And then it talks 22 about -- or competitors. 23 And it talks about limiting, 24 are they wanting to limit their exposure?</p>	<p style="text-align: right;">Page 301</p> <p>1 MR. NICHOLAS: Object to the 2 form. 3 Go ahead. 4 THE WITNESS: I wouldn't 5 know. I mean, I don't know if 6 that's occurring. You're giving 7 me a hypothetical. 8 Again, you know, it all 9 depends upon the circumstances of 10 the customer, the account, when 11 their contract is going to expire. 12 There's a lot of business -- other 13 things that are involved in that 14 decision. 15 BY MR. PIFKO: 16 Q. So you can't say for sure 17 that if you knew a customer was coming to 18 you because they were told no from their 19 primary supplier, you can't say that 20 that's not somebody you would want to 21 work with? 22 MR. NICHOLAS: Wait a 23 minute. Object to the form. 24 Mischaracterizes the testimony.</p>

<p style="text-align: right;">Page 302</p> <p>1 THE WITNESS: I'm not going 2 to answer a hypothetical. 3 You're throwing, if somebody 4 did X, would we do Y? I'm just 5 not in a position to make those 6 kinds of statements. 7 BY MR. PIFKO: 8 Q. So it wouldn't bother you if 9 a company was coming to you to circumvent 10 a competitor's controlled substances 11 requirements? 12 MR. NICHOLAS: Object to the 13 form. Asked and answered. 14 Mischaracterizes the testimony. 15 Probably way outside the scope of 16 the 30(b)(6) as well. 17 THE WITNESS: Again, you're 18 giving me a hypothetical set of 19 circumstances and you want me to 20 give you an answer. And I can't, 21 because I don't know the -- all 22 the -- whatever else you're 23 including in your hypothetical. 24 - - -</p>	<p style="text-align: right;">Page 304</p> <p>1 e-mail? 2 A. I don't. 3 Q. Do you have any reason to 4 believe this is not a true and correct 5 copy of an e-mail that you received? 6 A. No, I don't doubt that. 7 Q. We did talk about the HDMA a 8 little bit earlier. 9 Did you serve -- did you 10 serve, in any capacity, on any committee 11 or board or group within the HDMA? 12 A. At some point, I was on the 13 regulatory affairs committee. And now 14 I'm on the public -- I think they call it 15 the public policy committee. 16 Q. Do you believe that you were 17 on the regulatory affairs committee at 18 around the time this e-mail was sent in 19 September of 2007? 20 A. Could have been, yes. 21 Q. Do you recall what your 22 responsibilities were as a member of the 23 regulatory affairs committee? 24 A. As a member, I mean, we</p>
<p style="text-align: right;">Page 303</p> <p>1 (Whereupon, Amerisource 2 Bergen-Zimmerman Exhibit-11, 3 CAH_MDL_PRIORPROD_DEA_07_00880890- 4 92, was marked for 5 identification.) 6 - - - 7 BY MR. PIFKO: 8 Q. I'm handing you what is 9 marked as Exhibit-11. 10 It's a document produced by 11 Cardinal Health in this matter, which we, 12 under the protective order, obtained 13 prior approval to use it in this 14 deposition. It's Bates labeled 15 CAH_MDL_PRIORPROD_DEA07_00880890 to 92. 16 It's an e-mail at the top 17 from Steve Reardon, dated September 11, 18 2007, to Mr. Zimmerman. The subject is, 19 Summary of September 7th meeting with DEA 20 and attachments. 21 Let me know when you're done 22 reviewing it. 23 A. Okay. 24 Q. Do you recall receiving this</p>	<p style="text-align: right;">Page 305</p> <p>1 would talk about regulatory issues facing 2 wholesalers. 3 Q. Regulatory issues concerning 4 The Controlled Substances Act; is that 5 correct? 6 A. It could be a whole host of 7 things. It could be destruction. It 8 wasn't only for controlled substances. 9 Anything involving wholesale distribution 10 in the healthcare chain. 11 Q. But that could include 12 controlled substances? 13 A. Yes. 14 Q. Okay. How about diversion 15 control, would that include that? 16 A. Yes. 17 Q. Do you recall HDMA setting 18 up a meeting with members of the DEA 19 around this time in 2007? 20 A. I don't. 21 Q. This is around the time of 22 some of the Dear Registrant letters. 23 Do you agree? 24 A. Yes. Yes.</p>

<p style="text-align: right;">Page 306</p> <p>1 Q. Do you recall there being 2 more activity between members of the 3 industry and DEA at that time? 4 A. As I previously stated, I 5 mean, when I started, we met with DEA 6 every six months and it was a regular 7 activity. And then with the training 8 program, we met with them a lot more; 9 there was a lot more communication. 10 In 2007, this came shortly 11 after -- this is probably within weeks 12 after we got our distribution center back 13 and implemented our new program. So 14 there was a lot of activity on this 15 subject matter. 16 Q. Do you know why the HDMA 17 would have been having a meeting with the 18 DEA at this time? 19 MR. NICHOLAS: Object to the 20 form. 21 THE WITNESS: As I 22 indicated, at that time, they 23 would meet regularly with them; if 24 not every six months, every year.</p>	<p style="text-align: right;">Page 308</p> <p>1 one in years. People on my staff attend 2 them. 3 Q. When do you recall having 4 last attended one? 5 A. It may have been 2009. I am 6 not sure if I attended one in 2011. But 7 I know I haven't attended one for the 8 last, you know, years. 9 Q. You've always -- someone 10 from Amerisource has always been sent to 11 one of these conferences? 12 A. Usually, yes. 13 Q. And do they continue to this 14 day? 15 A. Yes. 16 Q. Do you know if there was one 17 in 2016? 18 A. I don't know if it's 2016 or 19 2017, but they have them every two years. 20 Q. Okay. Does anyone take 21 notes at these meetings? 22 A. I don't know if HDA as -- 23 does that or not. I don't know. 24 Q. Do you direct any of your</p>
<p style="text-align: right;">Page 307</p> <p>1 I don't know if this is a regular 2 meeting that they have to discuss 3 issues with distributors or 4 distributors wanting 5 clarification. 6 I'm not really sure what the 7 nexus of this meeting was about. 8 BY MR. PIFKO: 9 Q. Did you ever attend DEA 10 conferences? 11 A. Yes. 12 Q. How often does the DEA put 13 on conferences? 14 A. I believe every other year 15 for distributors, and then the other 16 years pharmacy practitioners. I'm not 17 positive about that. 18 But I know our meetings 19 are -- usually every two years, DEA will 20 have an industry meeting for 21 distributors. 22 Q. Do you always attend those? 23 A. I attended a lot of them 24 earlier on. I probably haven't attended</p>	<p style="text-align: right;">Page 309</p> <p>1 staff members to take notes of the 2 meetings if you don't attend? 3 A. They would -- I would assume 4 they would take notes. DEA usually 5 provides the slides that they produce at 6 the industry conferences. I'm not sure 7 if they put them on their website -- I'm 8 not sure if they put them on their 9 website or not. 10 Q. Do you discuss the 11 presentations or the conferences with 12 other members of the HDMA? 13 A. Do we discuss the DEA 14 conferences with HDMA members? Most of 15 them are usually there. I shouldn't say 16 all of them, but a lot of the members are 17 there at the DEA conference. 18 Q. So you meet with each other 19 while you're at these conferences? 20 You're there together? 21 A. Yes. 22 Q. Do you discuss diversion 23 control while you're at these 24 conferences?</p>

<p style="text-align: right;">Page 310</p> <p>1 MR. NICHOLAS: I'm going to 2 just object to the questions, only 3 to the extent that the witness 4 said he hasn't been to one of 5 these conferences himself since 6 2009 or maybe 2011. 7 So I want to make sure the 8 record is clear that we're, you 9 know -- he's not talking about -- 10 he can only talk about what he can 11 talk about. 12 Go ahead. 13 THE WITNESS: Years back, 14 yeah, we would talk about 15 regulatory issues or how we do 16 things or, you know, what -- those 17 type of things. 18 BY MR. PIFKO: 19 Q. Is there a meeting through 20 the HDMA, after these conferences, where 21 the members get together and discuss what 22 was said at the conference and their 23 views on the information that the DEA 24 might have shared at the conference?</p>	<p style="text-align: right;">Page 312</p> <p>1 Q. Do you know if he still 2 works at Cardinal Health? 3 A. He does not. 4 Q. Does he work for another 5 distributor, do you know? 6 A. He's retired. 7 Q. How about Anita Ducca, do 8 you know who that is? 9 A. I believe -- yes, I do. 10 Q. Who is she? 11 A. I believe she's vice 12 president of regulatory affairs for HDMA. 13 Q. So then Brian sends this to 14 Steve Reardon, and says, Steve, pasted 15 below please find the summary of HDMA's 16 meeting with the DEA last Friday. Please 17 let me know if you need anything else. 18 Do you see that? 19 A. Yes. 20 Q. And then it's got a summary 21 of the meeting here. 22 It says, Key takeaways from 23 the meeting were -- do you see where that 24 is?</p>
<p style="text-align: right;">Page 311</p> <p>1 MR. NICHOLAS: Same 2 objection for the same reason. 3 THE WITNESS: My 4 recollection was that, you know, 5 there would be discussions prior 6 to the meetings if there's 7 questions that we wanted to bring 8 up, as an industry. 9 I don't recall if there was 10 a structured debrief or anything 11 like that after. 12 BY MR. PIFKO: 13 Q. Let's look back at 14 Exhibit-11. 15 It says here -- well, first, 16 do you know who Brian Cherico is? 17 A. I'm not familiar with Brian. 18 Q. How about Steve Reardon? 19 A. Yes. 20 Q. Who is Steve Reardon? 21 A. He was -- I don't know if 22 he's director or senior director or vice 23 president of regulatory. I've known him 24 for quite some time.</p>	<p style="text-align: right;">Page 313</p> <p>1 A. Yes. 2 Q. DEA's policy was to expect 3 more than just reporting suspicious 4 orders. If there was a suspicious order, 5 the distributor should either stop the 6 delivery or should evaluate the customer 7 further before delivering it. 8 Do you see that? 9 A. Yes. 10 Q. Did you have an 11 understanding, at that time, that that 12 was DEA's position? 13 A. Yes. This was the program 14 that we had just negotiated. 15 Q. It says, Simply complying 16 with the suspicious orders regulatory 17 requirement does not mean, in the 18 agency's view, that the registrant is 19 maintaining an effective program to 20 detect and prevent diversion. 21 Do you see that? 22 A. Yes. 23 Q. Did you have an 24 understanding that that was the DEA's</p>

<p style="text-align: right;">Page 314</p> <p>1 position at the time?</p> <p>2 A. As I previously indicated,</p> <p>3 there's many requirements to have</p> <p>4 adequate controls to prevent diversion,</p> <p>5 other than just to report a suspicious</p> <p>6 order, yes.</p> <p>7 Q. It then says, DEA indicated</p> <p>8 that they did not have the resources to</p> <p>9 inspect every pharmacy; therefore, it was</p> <p>10 important for the distributor to, quote,</p> <p>11 know their customers, end quote.</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. Did you have an</p> <p>15 understanding that that was the DEA's</p> <p>16 position at the time?</p> <p>17 A. I've never seen it stated as</p> <p>18 such, that a lack of resources by DEA</p> <p>19 imposes a requirement upon a registrant</p> <p>20 over and above their regulatory</p> <p>21 responsibilities.</p> <p>22 Q. Well, they sent this e-mail</p> <p>23 to you saying this in 2007.</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 316</p> <p>1 Q. Upon receiving this e-mail,</p> <p>2 did AmerisourceBergen take any steps to</p> <p>3 respond to the idea that DEA did not have</p> <p>4 adequate resources to inspect pharmacies</p> <p>5 and, therefore, it was important for them</p> <p>6 to, quote, know their customer?</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: No. This</p> <p>10 is -- like I indicated previously,</p> <p>11 this is maybe a couple of weeks</p> <p>12 after we negotiated our program</p> <p>13 which contained the "know your</p> <p>14 customer." So there's no use to</p> <p>15 respond to this. This is our</p> <p>16 program.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. Let's go to the next page.</p> <p>19 It says, DEA provided</p> <p>20 examples of what a wholesale distributor</p> <p>21 should do to, quote, know their</p> <p>22 customers, end quote, and what to look</p> <p>23 for.</p> <p>24 Do you see that?</p>
<p style="text-align: right;">Page 315</p> <p>1 Q. Do you recall discussing</p> <p>2 that with anyone?</p> <p>3 A. No.</p> <p>4 Q. Do you recall being shocked</p> <p>5 that that was a new position of the DEA</p> <p>6 of which you weren't familiar with?</p> <p>7 A. No.</p> <p>8 Q. Okay. So that's consistent</p> <p>9 with the DEA's position as far as you</p> <p>10 knew at the time?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: You had stated</p> <p>14 that -- in our negotiation, they</p> <p>15 wanted us to enhance our due</p> <p>16 diligence process. What I don't</p> <p>17 recall them saying is that we</p> <p>18 can't -- we don't have resources</p> <p>19 to do this, so we want you to do</p> <p>20 that. I don't recall that.</p> <p>21 I recall them wanting us to</p> <p>22 enhance our due diligence process,</p> <p>23 yes.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 317</p> <p>1 A. Yes. I see that, yes.</p> <p>2 Q. Do you recall getting</p> <p>3 guidance from the DEA on what you should</p> <p>4 do to know your customers?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form. It seems like you'd want to</p> <p>7 call his attention to the</p> <p>8 additional sentences in the</p> <p>9 paragraph to help answer the</p> <p>10 question.</p> <p>11 THE WITNESS: As I</p> <p>12 indicated, we had had these</p> <p>13 discussions with the DEA in</p> <p>14 developing our program and the</p> <p>15 discussions about the form, yes.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Did you understand that the</p> <p>18 DEA wanted you to inspect pharmacies?</p> <p>19 A. Part of our due diligence</p> <p>20 program was to have a site visit and</p> <p>21 complete a form, yes.</p> <p>22 Q. This is what -- the new</p> <p>23 customer onboarding you talked about?</p> <p>24 A. Correct.</p>

<p style="text-align: right;">Page 318</p> <p>1 Q. Did you have an 2 understanding that you should inspect 3 customers who are existing customers? 4 A. No. 5 Q. It says, They -- referring 6 to the DEA -- also mentioned such actions 7 as, quote, doing Google searches, end 8 quote, to determine if the pharmacy's 9 name was affiliated with an Internet site 10 and getting information from the state as 11 to the nature and number of prior legal 12 actions against a pharmacy. 13 Do you see that? 14 A. Yes. 15 Q. Did you have an 16 understanding that the DEA expected you 17 to do those things? 18 MR. NICHOLAS: Object to the 19 form. 20 Go ahead. 21 THE WITNESS: That was 22 contained in our form, and that 23 was part of our process. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 320</p> <p>1 and the checks with the state and 2 federal agencies. 3 So the form is the beginning 4 of the investigation process. And 5 so when I say the 590, I should 6 probably clarify better, that's 7 the entire investigation process 8 and onboarding. And we started 9 doing that with existing customers 10 as well. 11 BY MR. PIFKO: 12 Q. Would you do it with any 13 frequency of existing customers, or would 14 you just do it once, get the form and 15 then move forward? 16 MR. NICHOLAS: Object to the 17 form. 18 THE WITNESS: Again, in 19 this -- we're talking the date of 20 this letter, we were just 21 implementing our program. So, you 22 know, we moved forward from that. 23 But in 2007, as of this 24 date, August, whatever, we were</p>
<p style="text-align: right;">Page 319</p> <p>1 Q. But, again, that was limited 2 to -- to the extent it was part of your 3 process, it was limited to the new 4 customer due diligence? 5 A. At this date, yes. 6 Q. At a later date, that kind 7 of investigation was more than just new 8 customer due diligence? 9 A. Yeah. We would go back and 10 start to populate our -- even though our 11 agreement with DEA was anything going 12 forward, we would start completing 590 13 forms for our existing customers as well. 14 Q. Other than completing 590 15 forms, did your efforts to do these 16 initial investigations include anything 17 else? 18 MR. NICHOLAS: Asked and 19 answered. 20 Go ahead. 21 THE WITNESS: The 590 form 22 is the basis of the -- that's the 23 questionnaire that starts the 24 investigation, the Google searches</p>	<p style="text-align: right;">Page 321</p> <p>1 doing new customer due diligence 2 at this time. 3 BY MR. PIFKO: 4 Q. How about after that; at any 5 period up until the end of 2014, did 6 AmerisourceBergen have any specific 7 frequency with which it would conduct 8 investigations of its customers through 9 the Form 590? 10 MR. NICHOLAS: Object to the 11 form. 12 Go ahead. 13 THE WITNESS: If there were 14 issues with the pharmacy or 15 changes, whether they wanted a 16 threshold increase, changes in the 17 operation of the pharmacy, we 18 would get an updated 590 and 19 conduct an investigation to 20 substantiate whatever the request 21 was, or the issue. 22 BY MR. PIFKO: 23 Q. But there was no set, we're 24 going to do it every six months, every</p>

<p style="text-align: right;">Page 322</p> <p>1 year, whatever, kind of thing?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: I don't</p> <p>5 recall.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. It says, towards the bottom,</p> <p>8 second-to-last bullet point, DEA also</p> <p>9 indicated that they were not going to</p> <p>10 make a decision for the wholesale</p> <p>11 distributor as to when an order was</p> <p>12 suspicious. They feel this is up to the</p> <p>13 distributor.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you understand that the</p> <p>17 determination of whether an order was</p> <p>18 suspicious was up to you?</p> <p>19 A. Yes.</p> <p>20 Q. The last bullet point says,</p> <p>21 DEA suggested that distributors should</p> <p>22 check on the pharmacy's prescribing</p> <p>23 physicians. They pointed to some states</p> <p>24 having online systems by which a</p>	<p style="text-align: right;">Page 324</p> <p>1 you gathered those forms for new</p> <p>2 customers from when you started the</p> <p>3 program in 2007. And at some point you</p> <p>4 started doing it for existing customers.</p> <p>5 Do you recall at what point</p> <p>6 that was?</p> <p>7 A. I don't know specifically.</p> <p>8 Q. Would it have been in 2009?</p> <p>9 A. It could have been the next</p> <p>10 week, if there was an issue, you know,</p> <p>11 if -- you go back to this -- the other</p> <p>12 document you showed, that if a customer</p> <p>13 was going to be looking to be resized, it</p> <p>14 would be a 590. If it was an existing</p> <p>15 customer, we would get a 590.</p> <p>16 Any new customer at ABC</p> <p>17 onboarding created a 590; any change, we</p> <p>18 would capture the 590 as well. It could</p> <p>19 be -- it wasn't in 2009, we started doing</p> <p>20 that, we started doing that immediately.</p> <p>21 Q. I thought I heard you say,</p> <p>22 though, at some point, you undertook a</p> <p>23 process to get Form 590s for all your</p> <p>24 existing customers.</p>
<p style="text-align: right;">Page 323</p> <p>1 distributor could check to see if a</p> <p>2 prescribing physician had a valid DEA</p> <p>3 registration. DEA suggested that</p> <p>4 distributors ask who the doctors are that</p> <p>5 are prescribing, where the pharmacy is</p> <p>6 geographically with respect to its</p> <p>7 prescribing doctors, and the patient</p> <p>8 population.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Did you have an</p> <p>12 understanding that that's what you were</p> <p>13 supposed to do, from the DEA?</p> <p>14 MR. NICHOLAS: Object to the</p> <p>15 form.</p> <p>16 Go ahead.</p> <p>17 THE WITNESS: I believe</p> <p>18 that's what we were doing.</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. You believe that's what you</p> <p>21 were doing in connection with the Form</p> <p>22 590 process?</p> <p>23 A. Yes. Correct.</p> <p>24 Q. At one point, you said that</p>	<p style="text-align: right;">Page 325</p> <p>1 Did I mishear you?</p> <p>2 A. So at some point, if we had</p> <p>3 a customer that was a 20-year customer,</p> <p>4 had never placed an order that ever met</p> <p>5 the requirement, had never had an issue,</p> <p>6 we started to process that, even though</p> <p>7 we never had an issue with this customer</p> <p>8 for 15 years, let's start to get a 590.</p> <p>9 If you had a customer that</p> <p>10 wanted to do a change in its business</p> <p>11 activity or what have you, we would get a</p> <p>12 590 on those.</p> <p>13 Q. I'm just trying to</p> <p>14 understand, the first thing that you just</p> <p>15 mentioned of getting them for any -- any</p> <p>16 customer, when was the time period when</p> <p>17 you believe that was started?</p> <p>18 A. I don't recall.</p> <p>19 Q. Was it recently?</p> <p>20 A. I don't -- I'm not sure what</p> <p>21 "recently" means, but it wasn't, like,</p> <p>22 this year. It's been -- we started that</p> <p>23 process a while back.</p> <p>24 Q. Two years ago?</p>

<p style="text-align: right;">Page 326</p> <p>1 A. I don't know. I don't know. 2 Q. Well after 2007? 3 A. I don't know. After 2007, 4 we were getting 590s on existing 5 customers, as we were building our 6 program. 7 Q. I'm just asking about this 8 process that you said, at some point, you 9 undertook an effort to get it from 10 existing customers, just going through 11 and getting them, regardless of whether 12 there was an incident. 13 And I'm just trying to 14 understand -- 15 A. And I don't know -- 16 Q. -- about when that happened. 17 A. -- when that happened. I 18 don't know. 19 Q. Do you recall taking any 20 action, as a result of receiving this 21 e-mail describing the DEA's position on 22 the issues we just discussed? 23 MR. NICHOLAS: Object to the 24 form.</p>	<p style="text-align: right;">Page 328</p> <p>1 (Whereupon, a brief recess 2 was taken.) 3 - - - 4 VIDEO TECHNICIAN: We're 5 back on record at 3:26 p.m. 6 - - - 7 (Whereupon, a discussion off 8 the record occurred.) 9 - - - 10 (Whereupon, Amerisource 11 Bergen-Zimmerman Exhibit-12, 12 MNKT1_0000291614-1620, was marked 13 for identification.) 14 - - - 15 BY MR. PIFKO: 16 Q. I've just handed you what's 17 marked as Exhibit-12. It's a document 18 Bates labeled MNKT1_0000291614 through -- 19 MR. CLUFF: This is another 20 one -- 21 BY MR. PIFKO: 22 Q. -- 1620. 23 MR. CLUFF: -- where we 24 obtained permission from</p>
<p style="text-align: right;">Page 327</p> <p>1 THE WITNESS: I'm not sure 2 what action -- I don't recall 3 getting the e-mail, so I don't 4 recall reading the e-mail and then 5 any action. 6 This is two weeks after we 7 put our program in place, which is 8 pretty much the points that 9 they're hitting on. 10 And I think this is in 11 September. And I spoke at their 12 conference, I think it was 13 November, and covered pretty much 14 these same points. So our program 15 was already meeting these 16 requirements. 17 MR. NICHOLAS: Mark before 18 you go to another document, it's 19 been two hours. Can we take a 20 break? 21 MR. PIFKO: Sure. 22 VIDEO TECHNICIAN: Going off 23 the record. 3:05 p.m. 24 - - -</p>	<p style="text-align: right;">Page 329</p> <p>1 Mallinckrodt's counsel prior to 2 its use today. 3 MR. NICHOLAS: Okay. 4 BY MR. PIFKO: 5 Q. Could you take a minute to 6 take a look at this document, please? 7 A. Yes. 8 Q. Let me know when you're 9 done. 10 I was only going to ask you 11 about a couple of things on here, in the 12 interest of time. Feel free to look at 13 it, but I can direct you to the couple of 14 questions. 15 Have you seen this document 16 before? 17 A. I don't recall seeing it 18 before. 19 Q. It says, HDMA, DMC expo, 20 2011. 21 Do you know what an HDMA, 22 DMC expo is? 23 A. HDMA has an annual 24 management conference, I'm assuming</p>

<p style="text-align: right;">Page 330</p> <p>1 that's what they're referring to.</p> <p>2 Q. When you were on -- you've</p> <p>3 been -- you've had a role with respect to</p> <p>4 the HDMA for a long time now, right?</p> <p>5 You've had different roles.</p> <p>6 I think -- I forget, but you</p> <p>7 were on one committee and then you're on</p> <p>8 some other committee now, right?</p> <p>9 A. That's correct.</p> <p>10 Q. So you've always had an</p> <p>11 affiliation with the HDMA?</p> <p>12 A. Yes.</p> <p>13 Q. Have you attended this</p> <p>14 conference in the past?</p> <p>15 A. I have.</p> <p>16 Q. Do you believe you attended</p> <p>17 this one?</p> <p>18 A. I may have. It's like with</p> <p>19 the other one, I don't -- I haven't</p> <p>20 attended them the last -- for years. I</p> <p>21 just don't know when -- when I stopped</p> <p>22 attending.</p> <p>23 Q. You see at the top here, it</p> <p>24 says, Attendees included</p>	<p style="text-align: right;">Page 332</p> <p>1 interacted with before?</p> <p>2 A. I have.</p> <p>3 Q. It says she's chief policy</p> <p>4 and liaison, Drug Enforcement</p> <p>5 Administration.</p> <p>6 A. Correct.</p> <p>7 Q. What did she do, as far as</p> <p>8 your interactions with her?</p> <p>9 A. She would be one, if we had</p> <p>10 a policy question or a process question,</p> <p>11 that we would either write to her or call</p> <p>12 her.</p> <p>13 Q. It says here, Cathy gave a</p> <p>14 brief overview of hot topics current</p> <p>15 within the DEA.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. In conferences -- in HDMA</p> <p>19 conferences you do remember attending, do</p> <p>20 you remember the DEA presenting current</p> <p>21 topics of interest to the members of the</p> <p>22 industry at these conferences?</p> <p>23 A. Yes. There was usually a</p> <p>24 segment that DEA presented at.</p>
<p style="text-align: right;">Page 331</p> <p>1 AmerisourceBergen, Cardinal, H.D. Smith,</p> <p>2 McKesson, Lilly, Johnson & Johnson,</p> <p>3 Purdue, Sanofi, Aventis, AmeriCares and</p> <p>4 many more.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. So you believe you would</p> <p>8 always send someone to these conferences</p> <p>9 if you didn't attend yourself?</p> <p>10 A. Yes.</p> <p>11 Q. I just want to know, I want</p> <p>12 to ask you about your familiarity with</p> <p>13 some of the topics that were discussed</p> <p>14 here.</p> <p>15 This is -- the notes here</p> <p>16 are about a specific DEA session that</p> <p>17 occurred on March 7th at this conference.</p> <p>18 Do you see that just on the</p> <p>19 first page at the top?</p> <p>20 A. Yes. ^^</p> <p>21 Q. Do you know who Cathy</p> <p>22 Gallagher is?</p> <p>23 A. I do.</p> <p>24 Q. Is that someone you've</p>	<p style="text-align: right;">Page 333</p> <p>1 Q. One of these, if you scroll</p> <p>2 way down to the bottom,</p> <p>3 second-to-the-last bullet point, Increase</p> <p>4 of ER visits are 97 percent contributable</p> <p>5 to pharmaceuticals; opioids are the most</p> <p>6 frequent.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall that being a</p> <p>10 topic of discussion within the industry</p> <p>11 in 2011?</p> <p>12 MR. NICHOLAS: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. Do you recall discussing</p> <p>17 that with anyone at the HDMA at any</p> <p>18 point?</p> <p>19 A. I don't recall discussions</p> <p>20 regarding emergency room visits, no.</p> <p>21 Q. Do you have any reason to</p> <p>22 dispute this fact?</p> <p>23 MR. NICHOLAS: Object to the</p> <p>24 form.</p>

Page 334

1 THE WITNESS: I'm assuming
2 that these are bullet points based
3 upon DEA slides. So, I mean, this
4 is what DEA presented.
5 BY MR. PIFKO:
6 Q. Let's turn to the next page.
7 Look at the heading, Rogue
8 Pain Clinics in Florida.
9 Do you see that?
10 A. Yes.
11 Q. It talks about Operation
12 Pill Nation, it looks like some sort of
13 enforcement initiative.
14 And then it says, Problem
15 now is migration, in quotes, vast
16 majority of patients are visiting Florida
17 from out of state.
18 It mentions various states,
19 including Ohio.
20 Do you see that?
21 A. Yes.
22 Q. Do you recall ever
23 discussing the topic of migration amongst
24 members of the industry or with HDA?

Page 335

1 MR. NICHOLAS: Objection.
2 Not to the form, but to the fact
3 that I think this is completely
4 outside the scope of the 30(b)(6),
5 unless you can tell me --
6 MR. PIFKO: He's the had
7 representative. I believe you
8 designated him for that topic.
9 THE WITNESS: I don't
10 recall.
11 BY MR. PIFKO:
12 Q. Did you undertake any
13 activities, in preparing for this
14 deposition, to familiarize yourself with
15 HDMA presentations?
16 A. I did not review any HDMA
17 presentations.
18 Q. Did you talk to anybody to
19 familiarize yourself with
20 AmerisourceBergen's role in participating
21 in HDMA-related events?
22 MR. NICHOLAS: Hold on.
23 I'll object only to the extent
24 that this may invade the

Page 336

1 attorney-client privilege.
2 Otherwise, you can answer.
3 THE WITNESS: No.
4 BY MR. PIFKO:
5 Q. Aside from communications
6 with the HDMA and this conference, are
7 you familiar with the idea of migration?
8 MR. NICHOLAS: Objection.
9 Outside the scope of the 30(b)(6).
10 THE WITNESS: I'm not -- in
11 what context?
12 BY MR. PIFKO:
13 Q. Well, okay, you're the top
14 dog with respect to the CSRA and
15 compliance at the company.
16 And I just want to know, in
17 serving in that role at the company, if
18 this idea of out-of-state people going to
19 different states to buy pills and
20 migrating them back to their hometown, if
21 that's something that you are familiar
22 with?
23 A. I've seen articles that
24 reference that.

Page 337

1 Q. When do you believe you've
2 seen articles about that?
3 A. I can't cite specific ones.
4 Q. How about general ones?
5 A. I can't cite general ones.
6 Q. So you can't cite any is
7 what you're saying?
8 MR. NICHOLAS: You're asking
9 him to cite an article?
10 BY MR. PIFKO:
11 Q. You've referenced that
12 you've seen articles, but you can't
13 identify a specific article, correct?
14 A. Correct.
15 Q. When do you believe you
16 might have first heard of the idea of
17 migration?
18 MR. NICHOLAS: Objection.
19 Outside the scope.
20 Are you asking him in the
21 30(b)(6) context or otherwise?
22 MR. PIFKO: Individually.
23 MR. NICHOLAS: Individually.
24 Go ahead.

<p style="text-align: right;">Page 338</p> <p>1 THE WITNESS: Was it ever 2 discussed, the term migration, as 3 you're stating it, of people that 4 were getting prescriptions filled 5 and then -- from out of state? I 6 mean, I had read articles on that 7 and I was aware of it. 8 BY MR. PIFKO: 9 Q. Okay. So migration is not a 10 term that you're familiar with, but you 11 are familiar with the idea of someone 12 traveling to a state and getting a 13 prescription and exporting it back to 14 somewhere else, correct? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: The specific 18 information that I had on that, on 19 the articles, was that -- whether 20 they were referring to some 21 arrests that were made by some 22 individuals who had gotten 23 prescriptions filled in another 24 state, and they arrested them in</p>	<p style="text-align: right;">Page 340</p> <p>1 does business with them? 2 MR. NICHOLAS: Object to the 3 form. 4 THE WITNESS: No. 5 BY MR. PIFKO: 6 Q. Does AmerisourceBergen 7 undertake any effort to understand the 8 identity of the doctors who write the 9 majority of a particular pharmacy's 10 prescriptions? 11 MR. NICHOLAS: Object to the 12 form. 13 THE WITNESS: As I indicated 14 in the 590, that we do ask for the 15 prescribers and that we would do a 16 check on the top prescribers for 17 the pharmacy. 18 BY MR. PIFKO: 19 Q. So in the 590 you ask for 20 the top prescribers? 21 A. Yes. 22 Q. Top what? Top ten? Top 23 five? 24 A. I'm not -- I'm not sure what</p>
<p style="text-align: right;">Page 339</p> <p>1 another state. If that makes 2 sense. 3 BY MR. PIFKO: 4 Q. Did you ever attempt to 5 adopt any policies and procedures at 6 AmerisourceBergen to address issues with 7 patients filling -- from out of state 8 coming to fill prescriptions in another 9 state? 10 A. We had no line of sight of 11 the prescriptions that are filled at the 12 pharmacy and where the patients are 13 coming from. 14 We deliver our products to 15 the licensed pharmacy. And then they 16 have a responsibility to ensure that the 17 prescriptions that they fill are 18 legitimate, as does the doctor who writes 19 them. 20 The distributor is two steps 21 removed from that process. 22 Q. Does AmerisourceBergen 23 undertake any effort to understand where 24 a pharmacy's customers come from when it</p>	<p style="text-align: right;">Page 341</p> <p>1 it is today. And as I said, it's changed 2 over time. So I'm not sure if it's five 3 or ten or -- 4 Q. I would be able to know that 5 by looking at the 590 form over the 6 various iterations of it? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: I would -- it 10 would depend on how the question 11 is asked on the form. I don't 12 have it in front of me. 13 BY MR. PIFKO: 14 Q. Well, I'm just trying to 15 understand what the company's policy was. 16 And if you don't know, that's fine. 17 I'm trying to understand 18 where I would go to find that information 19 out. 20 So if I wanted to know 21 where -- or when you say the top 22 prescribers, if I wanted to know top how 23 many prescribers, how would I find that 24 out?</p>

<p style="text-align: right;">Page 342</p> <p>1 A. The 590. I'm not sure if 2 the question says the top five 3 prescribers or the top prescribers or the 4 top six. I don't know every word. 5 Q. So if I had copies of every 6 iteration of the 590, I would know what 7 the practice was at any particular moment 8 in time? 9 MR. NICHOLAS: Object to the 10 form. 11 THE WITNESS: Again, the 12 form speaks for itself. 13 BY MR. PIFKO: 14 Q. But the form would tell me 15 that -- whatever information you're 16 seeking? 17 MR. NICHOLAS: Object to the 18 form of the question. 19 THE WITNESS: The form has 20 the requirements that we include 21 on the customer due diligence. 22 BY MR. PIFKO: 23 Q. So then you said that -- so 24 someone writes who the top prescribers</p>	<p style="text-align: right;">Page 344</p> <p>1 question. 2 THE WITNESS: You have to 3 ask the person that's performing 4 that function. 5 BY MR. PIFKO: 6 Q. Who is responsible for 7 performing that function currently? 8 A. David May is the one who 9 oversees that department. 10 Q. So someone under him would 11 be responsible for doing that? 12 A. Yes. 13 Q. Okay. David May joined the 14 company in 2014. 15 Who served in his role prior 16 to him? 17 A. Ed Hazewski. 18 Q. If I wanted to know, for an 19 earlier time period, what the company's 20 practices were with respect to what they 21 look at, with respect to prescribing 22 physicians, would I ask him? 23 A. Yes. 24 Q. And how far back was his</p>
<p style="text-align: right;">Page 343</p> <p>1 are on the form. 2 Then what does the CSRA do 3 with that information? 4 A. Then they verify that the 5 physicians are in good standing to 6 prescribe. 7 Q. And where do you check to do 8 that? 9 A. I would have to defer to the 10 person that's performing the 11 investigation, what websites they refer 12 to. Whether it's the Board of Pharmacy 13 or -- I'm not sure exactly. 14 Q. Do they check the geographic 15 location of the doctor in comparison to 16 the location of the pharmacy? 17 MR. NICHOLAS: Object to the 18 form. 19 THE WITNESS: I don't know. 20 BY MR. PIFKO: 21 Q. How would I find that 22 information out? 23 MR. NICHOLAS: Objection. 24 Object to the form of the</p>	<p style="text-align: right;">Page 345</p> <p>1 tenure in that position? 2 A. 2008, I believe. Somewhere 3 around there. 4 Q. Is he still with the 5 company? 6 A. Yes. 7 Q. What's his current role? 8 A. He's director diversion 9 control. 10 Q. In obtaining information 11 about a pharmacy, does AmerisourceBergen 12 investigate the type of doctor who is 13 writing prescriptions in comparison to 14 the type of pills he's prescribing, he or 15 she is prescribing? 16 MR. NICHOLAS: Hold on. 17 I'll object to the form. I also 18 would appreciate it if you would 19 put this into some time frame. 20 MR. PIFKO: For the time 21 period for which you're a 22 30(b)(6). 23 BY MR. PIFKO: 24 Q. Let me ask the question,</p>

Page 346

1 just to get a cleaner record.
2 During the time from prior
3 to -- from -- prior to 2015, in obtaining
4 information about a pharmacy's
5 prescribing physicians, does
6 AmerisourceBergen undertake any effort to
7 evaluate the nature of the physician in
8 comparison with the nature of the
9 medicine that's being prescribed?
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: I don't know
13 what medicine -- we get the top
14 prescribers for the form, but it
15 doesn't indicate what medicines
16 they're prescribing.
17 BY MR. PIFKO:
18 Q. Do you ask, with respect to
19 opioids or controlled substances -- let
20 me just -- with respect to controlled
21 substances, do you ask who the top
22 prescribers are of controlled substances?
23 MR. NICHOLAS: Objection.
24 THE WITNESS: I don't know

Page 347

1 exact -- if that's the wording of
2 the question. I don't know.
3 BY MR. PIFKO:
4 Q. So you don't know if the
5 question just asks for the top
6 prescribing physicians for all things
7 that they sell, or if it's just for
8 controlled substances?
9 A. Correct.
10 Q. Based on what you know,
11 would it be a red flag if a pharmacy was
12 writing -- filling a substantial number
13 of prescriptions from an out-of-area
14 doctor?
15 MR. NICHOLAS: Object to the
16 form.
17 THE WITNESS: Again, I don't
18 know the specific circumstances.
19 I don't know.
20 BY MR. PIFKO:
21 Q. That's not something that
22 you're familiar with?
23 MR. NICHOLAS: That's not
24 what he said. Objection.

Page 348

1 Go ahead.
2 THE WITNESS: I'm not
3 understanding your question.
4 BY MR. PIFKO:
5 Q. I'm trying to assess
6 whether, in evaluating activity at a
7 pharmacy, AmerisourceBergen considers the
8 fact that a large volume of prescriptions
9 are being written by an out-of-area
10 doctor for that pharmacy?
11 MR. NICHOLAS: Objection.
12 THE WITNESS: I would need
13 to know the totality of the
14 information. It goes back to a
15 hypothetical of giving me a
16 specific, if X then Y. I can't
17 give you that. I don't know.
18 I don't know if the pharmacy
19 is on the border of -- he's in one
20 state and the pharmacy is across
21 the border. I don't know. I
22 don't know.
23 BY MR. PIFKO:
24 Q. I'm asking a more general

Page 349

1 question.
2 Is that -- is that --
3 generically, is that information that you
4 would seek out, or is that something that
5 you're not interested in?
6 MR. NICHOLAS: I'll object
7 to the form of the question.
8 THE WITNESS: I would have
9 to defer to the people that are
10 doing the checks on the
11 prescribers.
12 BY MR. PIFKO:
13 Q. Let's talk a little bit more
14 about this document, Exhibit-12.
15 It says, below the migration
16 discussion, Identifying a rogue clinic.
17 Do you see that?
18 A. Yes.
19 Q. Cash-only operation.
20 Do you see that?
21 A. Yes.
22 Q. Does AmerisourceBergen
23 evaluate the percentage of cash versus
24 insurance payments that are made to a

Page 350

1 pharmacy with respect to controlled
2 substances?
3 MR. NICHOLAS: Object to the
4 form.
5 THE WITNESS: We -- part of
6 the 590 form has that information.
7 BY MR. PIFKO:
8 Q. Do you do anything to verify
9 that information, like check accounting
10 records from a pharmacy?
11 MR. NICHOLAS: Object to the
12 form.
13 THE WITNESS: We do not have
14 any way to confirm whether people
15 are paying cash or not.
16 BY MR. PIFKO:
17 Q. It says down here, Drugs
18 prescribed are cocktail drugs.
19 Do you see that?
20 Oxy/hydro/Xanax. Do you see
21 that?
22 A. Yes.
23 Q. Do you know what
24 oxy/hydro/Xanax is referring to?

Page 351

1 A. I do not.
2 Q. Oxycodone, hydrocodone and
3 Xanax, does that sound right?
4 A. I mean, I see those -- that
5 on here. I'm not sure what they're
6 referring to as "cocktail."
7 Q. Does AmerisourceBergen
8 evaluate whether a pharmacy is filling
9 multiple prescriptions at one time for
10 certain combinations of controlled
11 substances?
12 A. We don't have that
13 information. We don't have patient -- or
14 prescriber dispensing information.
15 Q. It talks about site visits
16 in the next line.
17 Do you see that?
18 A. Yes.
19 Q. Do you train your sales
20 associates to observe signs of diversion
21 when they are at a customer site?
22 A. Yes.
23 Q. What do you train them to
24 look for?

Page 352

1 A. We have a presentation that
2 they go through of some of -- long lines,
3 a lot of cash transactions. There's a
4 whole host of things that we ask them to
5 take a look at.
6 Q. And then what do you do with
7 that information if they report it back
8 to you?
9 A. If they report it back to
10 us, we would investigate.
11 Q. What would an investigation
12 entail? Who would take that up?
13 MR. NICHOLAS: Let me just
14 interpose an objection to make
15 sure I understand the time frame
16 that we're talking about and
17 whether he's talking about as an
18 individual or in his 30(b)(6)
19 capacity.
20 BY MR. PIFKO:
21 Q. In his 30(b)(6) capacity is
22 what I'm asking.
23 MR. NICHOLAS: 2007 to 2014.
24 THE WITNESS: And what was

Page 353

1 your question? I'm sorry.
2 BY MR. PIFKO:
3 Q. So we talked about efforts
4 that the company may undertake to have
5 its sales associates observe signs of
6 diversion at a pharmacy, okay?
7 A. Yes.
8 Q. So I asked, if a sales
9 associate reports back to the company,
10 during the time period for which you're a
11 30(b)(6) representative, what does the
12 company do with that information?
13 A. We would investigate.
14 Q. And is there a specific
15 department who is responsible for
16 investigating it?
17 A. It could be the diversion
18 control department. It could be the
19 security group. It could be our
20 consultant that we utilize. It could be
21 any of those areas.
22 Q. Is there a set way that you
23 decide who is going to investigate it?
24 A. It depends on the

<p style="text-align: right;">Page 354</p> <p>1 circumstances, location, those type of 2 criteria. 3 Q. So you evaluate the 4 circumstances and location of the 5 incident, and that's how you decide who 6 is going to investigate it? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: Yes. That's 10 part of the criteria of deciding 11 who is going to be performing the 12 investigation, depending upon, 13 again, what the issue is with the 14 pharmacy. 15 BY MR. PIFKO: 16 Q. Can you identify any 17 occasions where a sales associate, during 18 the relevant time period for which you 19 are a 30(b)(6), has identified suspicious 20 conduct and the company conducted an 21 investigation? 22 A. I'd have to result back to 23 those records. I don't -- 24 Q. What records would I look at</p>	<p style="text-align: right;">Page 356</p> <p>1 activity? 2 MR. NICHOLAS: Same 3 objection. And objection to form. 4 THE WITNESS: It would -- 5 the time frame you're talking 6 about, it would be in our 7 investigative -- investigation 8 records. 9 BY MR. PIFKO: 10 Q. Is there a specific name? 11 Just investigative records? 12 MR. NICHOLAS: Object to the 13 form. 14 Go ahead. 15 THE WITNESS: It's where we 16 maintain our investigations, yes. 17 BY MR. PIFKO: 18 Q. Have you ever heard the term 19 "due diligence files"? 20 A. Yes. 21 Q. Is that the same thing as 22 your investigation records, or is that 23 something different? 24 A. It could be. There could be</p>
<p style="text-align: right;">Page 355</p> <p>1 to know that information? 2 MR. NICHOLAS: Let me make 3 sure I clarify that you're talking 4 about the Track 1 jurisdictions 5 now, right? 6 MR. PIFKO: Well, I'm 7 talking about their policies and 8 procedures in general. 9 MR. NICHOLAS: But you asked 10 him about identifying particular 11 instances. So I assume that we're 12 talking about Track 1 13 jurisdictions; is that correct? 14 MR. PIFKO: I was talking 15 about any jurisdiction. 16 MR. NICHOLAS: Well, then, I 17 object. It's overbroad and not 18 within the scope of the deposition 19 at all. 20 Go ahead. 21 BY MR. PIFKO: 22 Q. So my question was, what 23 records would I look at to know whether a 24 sales associate had reported suspicious</p>	<p style="text-align: right;">Page 357</p> <p>1 a record of the investigations within the 2 due diligence file. But it also could be 3 in an investigation file, depending upon 4 the type and scope of the investigation. 5 Q. Who is responsible for 6 maintaining investigation files at the 7 company? 8 A. Bruce Gundy. 9 Q. How long has he had that 10 responsibility? 11 A. During the scope of 2007 to 12 2014. 13 Q. Okay. Do you know who has 14 that responsibility currently? 15 A. Bruce Gundy, same person. 16 Q. Does AmerisourceBergen 17 believe it's everybody in the company's 18 responsibility to prevent diversion? 19 MR. NICHOLAS: Object to the 20 form. It's an unfair question. 21 Go ahead. 22 THE WITNESS: We believe 23 that everyone has a responsibility 24 for compliance and need to conduct</p>

<p style="text-align: right;">Page 358</p> <p>1 themselves such.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Do you know if your sales</p> <p>4 associates receive bonuses from hitting</p> <p>5 sales targets?</p> <p>6 A. I don't know --</p> <p>7 MR. NICHOLAS: Hold on.</p> <p>8 This witness is not designated on</p> <p>9 the topic of compensation, as you</p> <p>10 know. So he's not in a position</p> <p>11 to answer that. There are other</p> <p>12 people who can answer that</p> <p>13 question, but not him.</p> <p>14 MR. PIFKO: It's a</p> <p>15 foundational question.</p> <p>16 MR. NICHOLAS: Well, I mean,</p> <p>17 this isn't his topic.</p> <p>18 MR. PIFKO: Okay. But he</p> <p>19 said he doesn't know, so we got</p> <p>20 the answer.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. Do you think there's a</p> <p>23 potential conflict in having someone who</p> <p>24 is bonus driven be responsible for</p>	<p style="text-align: right;">Page 360</p> <p>1 form.</p> <p>2 THE WITNESS: When the</p> <p>3 premise of your question is if</p> <p>4 they're bonus driven, I don't know</p> <p>5 that. And as you -- and as I</p> <p>6 indicated previously, all of our</p> <p>7 associates have a role in their</p> <p>8 responsibility to make sure that</p> <p>9 we operate in compliance,</p> <p>10 regardless of what their role is;</p> <p>11 whether they're an order filler,</p> <p>12 salesperson, record keeper.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Okay. But if someone has a</p> <p>15 compensation structure that's based on</p> <p>16 increasing sales, do you see that as at</p> <p>17 odds with identifying diversion?</p> <p>18 MR. NICHOLAS: Objection.</p> <p>19 Not within the scope of his areas.</p> <p>20 And I object to the form of the</p> <p>21 question. It's a hypothetical</p> <p>22 question as well.</p> <p>23 THE WITNESS: It's a</p> <p>24 hypothetical question.</p>
<p style="text-align: right;">Page 359</p> <p>1 identifying diversion?</p> <p>2 MR. NICHOLAS: Objection.</p> <p>3 Hold on. This isn't his area.</p> <p>4 It's not his area. You didn't</p> <p>5 designate him for this area. You</p> <p>6 have someone who you're going to</p> <p>7 depose on the issue of</p> <p>8 compensation.</p> <p>9 MR. PIFKO: It has to do</p> <p>10 with suspicious order monitoring</p> <p>11 processes and protocols.</p> <p>12 THE WITNESS: Can you</p> <p>13 restate the --</p> <p>14 MR. PIFKO: Yeah.</p> <p>15 In any event, you can object</p> <p>16 to scope, and we can fight about</p> <p>17 the impart of his testimony later.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. So the question is, do you</p> <p>20 think there is a potential conflict in</p> <p>21 having someone who is bonus driven be</p> <p>22 responsible for identifying diversion?</p> <p>23 MR. NICHOLAS: Same</p> <p>24 objection. Also, object to the</p>	<p style="text-align: right;">Page 361</p> <p>1 It goes back to the --</p> <p>2 you're giving me a set of</p> <p>3 potential facts and asking me to</p> <p>4 arrive at a conclusion. It would</p> <p>5 depend upon the situation.</p> <p>6 I don't think -- what you're</p> <p>7 inferring, I don't think, is</p> <p>8 correct.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. What am I inferring?</p> <p>11 MR. NICHOLAS: Hold it.</p> <p>12 Hold it. Object to the form of</p> <p>13 the question.</p> <p>14 The question is, what am I</p> <p>15 inferring? I object to the form</p> <p>16 of the question. I suggest we</p> <p>17 move on to some facts and not</p> <p>18 looking for sound bites.</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. I asked you what you thought</p> <p>21 I was inferring.</p> <p>22 MR. NICHOLAS: Same</p> <p>23 objections.</p> <p>24 THE WITNESS: Can you repeat</p>

<p style="text-align: right;">Page 362</p> <p>1 the question?</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. I asked you, do you think</p> <p>4 there's a potential conflict in having</p> <p>5 someone who is bonus driven be</p> <p>6 responsible for identifying diversion?</p> <p>7 A. My answer is no.</p> <p>8 - - -</p> <p>9 (Whereupon, Amerisource</p> <p>10 Bergen-Zimmerman Exhibit-13,</p> <p>11 ABDCMDL 00278212, was marked for</p> <p>12 identification.)</p> <p>13 - - -</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. I'm handing you what is</p> <p>16 marked as Exhibit-13. For the record,</p> <p>17 it's a single-page document, Bates</p> <p>18 labeled ABDCMDL 00278212. And the</p> <p>19 metadata reflects that it's from your</p> <p>20 files, Mr. Zimmerman.</p> <p>21 Let me know when you're done</p> <p>22 reviewing it.</p> <p>23 A. Okay.</p> <p>24 Q. Do you recall this document?</p>	<p style="text-align: right;">Page 364</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. That's what the document</p> <p>3 says, okay?</p> <p>4 Do you dispute that it came</p> <p>5 from your computer?</p> <p>6 MR. NICHOLAS: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: I don't know</p> <p>9 if it came -- I mean, you're</p> <p>10 telling me it came from my</p> <p>11 computer. I don't recall ever</p> <p>12 seeing this document.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Do you know what this</p> <p>15 document is about?</p> <p>16 A. I've never seen this</p> <p>17 document.</p> <p>18 Q. Your testimony is you've</p> <p>19 never seen this document?</p> <p>20 A. I don't recall ever seeing</p> <p>21 this document.</p> <p>22 Q. Do you recall ever</p> <p>23 discussing this with anyone?</p> <p>24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 363</p> <p>1 A. I do not.</p> <p>2 Q. Do you recall writing this</p> <p>3 document?</p> <p>4 A. No.</p> <p>5 Q. Do you have any reason to</p> <p>6 dispute that this is a true and correct</p> <p>7 document that came from your files?</p> <p>8 MR. NICHOLAS: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: I don't know</p> <p>11 where it came from.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Well, you understand that in</p> <p>14 litigation, documents come with</p> <p>15 information that tells you where they</p> <p>16 came from, as far as whose computer, et</p> <p>17 cetera? Do you understand that?</p> <p>18 A. Yes.</p> <p>19 Q. Well, this came from your</p> <p>20 computer.</p> <p>21 MR. NICHOLAS: I think the</p> <p>22 hang up here is you're just</p> <p>23 telling him stuff, and he has,</p> <p>24 really, no way of knowing.</p>	<p style="text-align: right;">Page 365</p> <p>1 form.</p> <p>2 THE WITNESS: This document?</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. The subject matter of this</p> <p>5 document.</p> <p>6 A. As we previously discussed,</p> <p>7 we talked about low-volume accounts, so</p> <p>8 I've had discussions regarding that.</p> <p>9 Q. Do you see here it says --</p> <p>10 it's talking about -- so it's talking</p> <p>11 about those types of customers,</p> <p>12 low-volume, high-controlled substances</p> <p>13 customers.</p> <p>14 It says, I'm rather</p> <p>15 concerned -- I'm in the middle of the</p> <p>16 document.</p> <p>17 I'm rather concerned about</p> <p>18 your pharmacy for a different reason.</p> <p>19 Based on your overall volume with us,</p> <p>20 your percentage of C-II orders is high</p> <p>21 and may be deemed suspicious by either</p> <p>22 our OMP system or regulatory authorities.</p> <p>23 This puts your account with</p> <p>24 AmerisourceBergen at significant risk of</p>

<p style="text-align: right;">Page 366</p> <p>1 closure or exposure to regulatory and 2 enforcement agencies. 3 Do you see that? 4 A. I do. 5 Q. Do you recall being 6 concerned about certain customers because 7 of their percentage of controlled 8 substances with respect to their overall 9 volume? 10 MR. NICHOLAS: Object to the 11 form. 12 THE WITNESS: As I 13 indicated, that was one of the 14 areas we were looking at, our 15 low-volume, higher-percentage 16 secondary accounts and whether 17 we -- you know, how we handled 18 those accounts. 19 BY MR. PIFKO: 20 Q. Did you ever undertake 21 efforts to report accounts for such 22 activity? 23 MR. NICHOLAS: Object to the 24 form.</p>	<p style="text-align: right;">Page 368</p> <p>1 A. Yes. 2 Q. -- is, you don't have a 3 position on whether it's appropriate to 4 give guidance to a customer on how to 5 escape your suspicious order monitoring 6 program? 7 MR. NICHOLAS: Well, that is 8 not what he said. I object to the 9 characterization of his testimony. 10 I object to the reference to the 11 jury, which is bullying and 12 harassing. 13 And why don't you just ask 14 him a factual question? 15 Go ahead. 16 THE WITNESS: We don't give 17 guidance to our customers on how 18 to circumvent our system. 19 BY MR. PIFKO: 20 Q. Do you believe that it's 21 inappropriate to do so? 22 MR. NICHOLAS: Object to the 23 form. 24 THE WITNESS: Again, to do</p>
<p style="text-align: right;">Page 367</p> <p>1 THE WITNESS: Report in what 2 way? 3 BY MR. PIFKO: 4 Q. As being suspicious. 5 A. If they placed an order that 6 met our suspicious order criteria, we 7 would have. 8 Q. Do you think it's 9 appropriate to provide guidance to a 10 customer on how to circumvent your 11 suspicious order monitoring program? 12 MR. NICHOLAS: Object to the 13 form. 14 THE WITNESS: I don't 15 think -- I'm not sure what your 16 question -- again, you're asking 17 me another hypothetical question 18 and asking me to give you a 19 response that -- again, I can't -- 20 I'm not going to answer a 21 hypothetical. 22 BY MR. PIFKO: 23 Q. So your position, the jury 24 is watching --</p>	<p style="text-align: right;">Page 369</p> <p>1 what? 2 BY MR. PIFKO: 3 Q. To tell a customer how not 4 to be caught by your system or the DEA's 5 system for engaging in suspicious 6 activity. 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: Again -- 10 MR. NICHOLAS: What DEA 11 system are you talking about? 12 THE WITNESS: Again, we have 13 a program that we implement and we 14 have our processes in place. And 15 we don't -- and part of that 16 process is not to tell customers 17 how to get around the system, or 18 however you worded it. 19 But that's not how our 20 program works. 21 BY MR. PIFKO: 22 Q. So here, after saying to 23 this category of customers, based on your 24 overall volume with us, your percentage</p>

<p style="text-align: right;">Page 370</p> <p>1 of C-II orders is high and may be deemed 2 suspicious by either our OMP system or 3 regulatory authorities, this document 4 then goes on to say, The way I see it is 5 that you have a couple of options. 6 First, you can make ABDC your primary 7 wholesaler and shift all purchases to us. 8 The second option is we arrange a 9 short-term transition process and you 10 stop buying controlled -- Schedule II 11 controlled substances from ABDC and shift 12 them to whomever you're buying other 13 products. The third option would be to 14 do nothing, but this is not a feasible 15 long-term decision. 16 Do you see that? 17 A. I see that. 18 Q. Do you think that's 19 appropriate guidance to give to a 20 customer? 21 MR. NICHOLAS: Hold on. 22 Objection. You are 23 mischaracterizing the witness's 24 testimony. The witness has said</p>	<p style="text-align: right;">Page 372</p> <p>1 throughout the day. 2 MR. NICHOLAS: I'm speaking 3 to you. And I'm speaking for the 4 record. 5 THE WITNESS: I don't know 6 who this document was -- 7 BY MR. PIFKO: 8 Q. That's not my question. I 9 didn't ask you who wrote the document, I 10 didn't ask you any of that. 11 I asked you if this kind of 12 language is an appropriate communication 13 to a customer? 14 MR. NICHOLAS: Objection to 15 the form of the question. 16 THE WITNESS: I don't know 17 if -- I don't know if it's a 18 communication to a customer. 19 You're asking me a question with a 20 conclusion that this is a 21 communication to a customer. And 22 you want me to answer the 23 question. I don't know it's a 24 communication.</p>
<p style="text-align: right;">Page 371</p> <p>1 he never -- he didn't write the 2 document. He's never seen the 3 document. 4 So I object to the line of 5 questions. This is not 30(b)(6) 6 material. I don't know why -- 7 it's not within -- 8 MR. PIFKO: You're over the 9 top with your objections. 10 MR. NICHOLAS: It's not 11 within -- 12 MR. PIFKO: Okay. Scope. 13 MR. NICHOLAS: -- his 14 personal knowledge. 15 MR. PIFKO: Scope. Scope, 16 and all the objections you want to 17 make. You need to stop speaking 18 to the witness, okay? 19 MR. NICHOLAS: I'm not 20 speaking to the witness. I'm 21 speaking to you. 22 MR. PIFKO: You are. He's a 23 smart guy. Obviously, he picks up 24 on this stuff. It has happened</p>	<p style="text-align: right;">Page 373</p> <p>1 BY MR. PIFKO: 2 Q. If this is communicated to a 3 customer, is this an appropriate message 4 to be communicated to a customer? It's a 5 simple question. 6 MR. NICHOLAS: Object to the 7 form of the question. Whether 8 it's a simple question or not, 9 it's not a fair question. 10 BY MR. PIFKO: 11 Q. AmerisourceBergen's position 12 is you don't know if this is an 13 appropriate type of conduct; is that what 14 I'm hearing from you? 15 MR. NICHOLAS: That's not 16 what he said. 17 THE WITNESS: I don't know 18 what -- who wrote it, who the 19 audience is, and what the 20 conversation is. It says, Talking 21 points. 22 Is it -- either you bring us 23 your full business or we can't 24 sell you controls, that's the --</p>

<p style="text-align: right;">Page 374</p> <p>1 that's the option. Is that an 2 appropriate discussion? I think 3 so. 4 BY MR. PIFKO: 5 Q. How about telling someone 6 that they can stop buying controlled 7 substances from you and shift them to 8 somebody else? 9 MR. NICHOLAS: Object to the 10 form of the question. You're just 11 arguing. 12 THE WITNESS: I think I 13 answered your question. 14 BY MR. PIFKO: 15 Q. You talked about the first 16 suggestion. I'm asking about the second 17 one. 18 MR. NICHOLAS: Object to the 19 form. Object to the debating. 20 THE WITNESS: I answered one 21 and two. One is bring us all your 22 business or, two, stop buying 23 C-IIs from us. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 376</p> <p>1 It's asked and answered. 2 THE WITNESS: It's the same 3 answer. 4 BY MR. PIFKO: 5 Q. I don't believe I've gotten 6 an answer, so I'm going to ask you again. 7 A. Is it appropriate to tell a 8 secondary customer that either they bring 9 us their full book of business or we're 10 going to stop selling you controlled 11 substances? Is that your question? 12 Q. I'm asking this message in 13 here. 14 I'm asking if this message 15 is an appropriate message to communicate 16 to customers? 17 MR. NICHOLAS: Object to the 18 form. Because that's how he's 19 reading the message in here. So 20 he's answering -- 21 MR. PIFKO: Again, you're 22 coaching him. 23 MR. NICHOLAS: No, I'm not. 24 You're not listening to his</p>
<p style="text-align: right;">Page 375</p> <p>1 Q. And buy them from someone 2 else? Do you think it's an 3 appropriate -- 4 A. Buy it from their primary 5 vendor. 6 Q. So you think this is an 7 appropriate message to send to people? 8 MR. NICHOLAS: Object to the 9 form of the question. It's not 10 his message. 11 THE WITNESS: Is your 12 question is it appropriate for 13 customers to buy from a 14 wholesaler? 15 BY MR. PIFKO: 16 Q. My question is, is this an 17 appropriate message to communicate to 18 customers? 19 MR. NICHOLAS: Object to the 20 question. We're obviously 21 disagreeing as to what is the 22 "this." So it's an unfair 23 question. 24 But he's answered it anyway.</p>	<p style="text-align: right;">Page 377</p> <p>1 answers. 2 MR. PIFKO: You're coaching 3 him. And, honestly, if you keep 4 this up, I'm going to seek to have 5 you removed from defending any 6 depositions in this case, okay? 7 MR. NICHOLAS: That's fine. 8 MR. PIFKO: It's fine to 9 object vigorously and be 10 passionate about your position. 11 But you're going way above and 12 beyond, and you've been doing it 13 all day long. 14 And we are going to read the 15 transcript and it's going to show 16 all the discussion you're having, 17 asking facts, telling me what to 18 ask. That is not okay. 19 MR. NICHOLAS: 20 Unfortunately -- 21 MR. PIFKO: You look like 22 you've been practicing long enough 23 to know that. 24 MR. NICHOLAS: If you're</p>

<p style="text-align: right;">Page 378</p> <p>1 telling me -- if you're telling 2 me -- 3 MR. PIFKO: I understand 4 it's a big case and you're 5 stressed out. 6 MR. NICHOLAS: If you're 7 telling me I look old, I'm 8 insulted. 9 MR. PIFKO: But you have to 10 conduct yourself accordingly. 11 MR. NICHOLAS: I think 12 you're making a comment on my 13 personal look. You think I look 14 old? 15 MR. PIFKO: I don't think 16 you look old. I think you're an 17 established practitioner and I 18 think you know better and you know 19 that you know better. And you're 20 playing games here, and it needs 21 to stop. 22 MR. NICHOLAS: Are you going 23 to let me say something? 24 MR. PIFKO: No, I'm not here</p>	<p style="text-align: right;">Page 380</p> <p>1 don't know what their inference 2 was in writing this. 3 BY MR. PIFKO: 4 Q. So you can't provide an 5 opinion about whether this is an 6 appropriate message to send to somebody? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: And, again, 10 it's a talking point, and it's not 11 being sent to anyone. I don't 12 know -- you're asking me to give 13 you an answer to something I don't 14 know about. 15 BY MR. PIFKO: 16 Q. All right. That's your 17 position. That's fine. 18 - - - 19 (Whereupon, Amerisource 20 Bergen-Zimmerman Exhibit-14, 21 ABDCMDL 00000124-147, was marked 22 for identification.) 23 - - - 24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 379</p> <p>1 to ask you questions. 2 MR. NICHOLAS: Whether you 3 do or not, I'm -- 4 MR. PIFKO: No, you're not 5 entitled -- you're not the 6 witness. You're not entitled to 7 talk. You're just continuing the 8 problem right now. 9 BY MR. PIFKO: 10 Q. So I'm asking you, sir, you 11 read this document, you did, do you think 12 this is a message that is appropriate to 13 communicate to consumers -- customers? 14 MR. NICHOLAS: Object to the 15 form. 16 THE WITNESS: I don't know 17 what the message was. I don't 18 know who wrote the message. I 19 don't know who the audience of the 20 message was. I don't know. 21 You're asking me to commit 22 to something -- I don't know who 23 wrote this. I don't know the 24 talking points. I don't know -- I</p>	<p style="text-align: right;">Page 381</p> <p>1 Q. I'm handing you what is 2 marked as Exhibit-14. 3 A. Thank you. 4 Q. Bates labeled ABDCMDL 5 00000124 through 147. 6 According to the metadata on 7 this document, it has a doc date of 8 December 31st, 2007. 9 A. Okay. 10 Q. Have you seen this document 11 before? 12 A. It looks like a 13 presentation. 14 Q. Do you know what it's a 15 presentation for? 16 A. It says the sales associate 17 role. 18 Q. And the sales associate role 19 in what? 20 A. In diversion control. I 21 mean, that's the title of the 22 presentation. 23 Q. Is this something you 24 reviewed in preparing for your</p>

<p style="text-align: right;">Page 382</p> <p>1 deposition?</p> <p>2 A. I believe I've seen a copy</p> <p>3 of this, yes.</p> <p>4 Q. In your undertaking to</p> <p>5 familiarize yourself with the company's</p> <p>6 diversion control practices and policies,</p> <p>7 did you obtain an understanding of what</p> <p>8 the purpose of this presentation was for?</p> <p>9 A. It was for the sales -- I</p> <p>10 believe it was for the sales group.</p> <p>11 Q. Do you know when it was</p> <p>12 given to them?</p> <p>13 A. I don't.</p> <p>14 Q. Do you know who would have</p> <p>15 given this presentation to them?</p> <p>16 A. I believe it was Ed</p> <p>17 Hazewski.</p> <p>18 Q. He was someone who was under</p> <p>19 your chain of authority?</p> <p>20 A. Yes.</p> <p>21 Q. At that time, was he a</p> <p>22 direct report to you?</p> <p>23 A. I don't believe so.</p> <p>24 Q. There was one person in</p>	<p style="text-align: right;">Page 384</p> <p>1 A. That's correct. A lot of</p> <p>2 the information is the same that we've</p> <p>3 reviewed.</p> <p>4 Q. Let's look at Page ABDCMDL</p> <p>5 00000130.</p> <p>6 Are you there?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know what this slide</p> <p>9 is about?</p> <p>10 A. It looks like it has -- the</p> <p>11 title is -- the slide is titled,</p> <p>12 Suspicious Order Investigation.</p> <p>13 Q. Aside from reading the</p> <p>14 document, do you know what this is about?</p> <p>15 MR. NICHOLAS: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: It's about</p> <p>18 suspicious order investigation.</p> <p>19 I'm not sure what your question</p> <p>20 is.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. I'm asking if -- are these</p> <p>23 parameters consistent with a specific</p> <p>24 type of investigation that you're</p>
<p style="text-align: right;">Page 383</p> <p>1 between you and him?</p> <p>2 A. Yes, I believe so.</p> <p>3 Q. Are the statements in here</p> <p>4 consistent with your understanding of</p> <p>5 what AmerisourceBergen's program was and</p> <p>6 the training that was provided to sales</p> <p>7 associates --</p> <p>8 MR. NICHOLAS: Object to the</p> <p>9 form.</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. -- with respect to diversion</p> <p>12 control?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 Go on.</p> <p>16 THE WITNESS: I mean, this</p> <p>17 is -- you want me to generally</p> <p>18 comment on the entire -- the</p> <p>19 presentation itself?</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. Well, you reviewed the</p> <p>22 document.</p> <p>23 A lot of these slides we've</p> <p>24 seen before in earlier documents, agreed?</p>	<p style="text-align: right;">Page 385</p> <p>1 familiar with?</p> <p>2 A. These are some of the</p> <p>3 components that the diversion group will</p> <p>4 review, yes.</p> <p>5 Q. Where would they get this</p> <p>6 information from?</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: I'm not --</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. Would this be on the Form</p> <p>12 590?</p> <p>13 MR. NICHOLAS: Object to the</p> <p>14 form.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: The Form</p> <p>17 590 -- they may reference the Form</p> <p>18 590, they may have a monthly</p> <p>19 report that has the controlled</p> <p>20 substance ratio. They look at</p> <p>21 purchase history.</p> <p>22 I mean, as it's here, it's</p> <p>23 all -- it could be in different</p> <p>24 areas that they look.</p>

<p style="text-align: right;">Page 386</p> <p>1 BY MR. PIFKO: 2 Q. Are sales associates 3 instructed to gather this information and 4 provide it to the CSRA? 5 A. No. 6 Q. Let's go to the part where 7 it's got these pictures, starting on 141. 8 A. Yes. 9 Q. It says, Red flag. 10 Do you see that? 11 A. Yes. 12 Q. Do you have an understanding 13 about why that's a red flag? 14 A. A line out front of the 15 pharmacy. 16 Q. Why is that a red flag? 17 A. A red flag is -- and, again, 18 you have to take it in context. Is this, 19 you know -- is this in the middle of the 20 day? Is it the beginning of -- is it 21 prior to opening? It could be a red 22 flag. 23 And so a lot of these are 24 examples that could be; not necessarily</p>	<p style="text-align: right;">Page 388</p> <p>1 line out in front of the pharmacy. But 2 that's something that the sales 3 associates, if they see that, they need 4 to inquire about that. 5 Q. I'm not the one who wrote 6 red flag here. 7 It says red flag, so I'm 8 just trying to understand why -- 9 A. You were asking me why -- 10 Q. -- why someone would 11 consider that to be a red flag? 12 MR. NICHOLAS: Object to the 13 form. 14 BY MR. PIFKO: 15 Q. So am I understanding, your 16 testimony is that a line outside the 17 pharmacy would be unusual and that's why 18 it's a red flag? 19 MR. NICHOLAS: Object to the 20 form. 21 THE WITNESS: As I stated, 22 it could be. Again, we're trying 23 to provide examples of things 24 that -- to look for. And a line,</p>
<p style="text-align: right;">Page 387</p> <p>1 are, but could be. 2 Q. Why could this be a red 3 flag? 4 A. Because you have people 5 waiting in line for prescriptions. 6 Q. And why is that a 7 potentially bad thing? 8 A. It's not -- 9 MR. NICHOLAS: Object to the 10 form. 11 Go ahead. 12 THE WITNESS: It's not a 13 potentially bad thing, it's just 14 not -- I think it could be 15 unusual. 16 BY MR. PIFKO: 17 Q. And why would that be 18 unusual? 19 A. I know the pharmacy I go to, 20 there's not a line out the front. But 21 that doesn't mean -- there could not -- 22 be another reason, like they're giving 23 free hot dogs that day. I don't know. 24 I'm just saying, there's a</p>	<p style="text-align: right;">Page 389</p> <p>1 they should probably find out, are 2 they giving away free hot dogs or 3 why is there a line out the door? 4 It's just something that 5 they should inquire about or 6 report back to us about. 7 BY MR. PIFKO: 8 Q. Is there an illicit reason 9 why there could be a line? 10 MR. NICHOLAS: Object to the 11 form. 12 THE WITNESS: Is there an 13 illicit reason? I mean, if 14 they're lined up there -- and, 15 again, I don't know, it could be a 16 sign, if pharmacies -- has an 17 increased business, to require a 18 line out the door, we would want 19 to look into it as to why. 20 It's just a data point that 21 we would want additional 22 information on. 23 BY MR. PIFKO: 24 Q. Could a line out the door of</p>

<p style="text-align: right;">Page 390</p> <p>1 a pharmacy be an indicator of illegal 2 conduct?</p> <p>3 A. Again, you're asking me 4 could it? And, again, it's a 5 hypothetical. It's one point in the 6 investigation, or one point of 7 information that we would want, as the 8 department, to then do additional 9 investigations.</p> <p>10 They may not even sell 11 controlled substances, then it would not 12 be -- you know, it may not be illicit 13 behavior. I don't know the full 14 circumstances.</p> <p>15 But it's just an example of 16 one thing, a data point, that if they see 17 they should report back so we can look 18 into it.</p> <p>19 Q. Okay. And you're head of 20 the department that would look into it, 21 right? And you were during the period 22 from 2006 to 2014, correct?</p> <p>23 A. Yes.</p> <p>24 Q. What would -- someone</p>	<p style="text-align: right;">Page 392</p> <p>1 A. I think that's what it says. 2 It's kind of a bad picture, but yeah.</p> <p>3 Q. I think it's actually better 4 smaller.</p> <p>5 Again, I'm not the one that 6 created this document, sir, your company 7 created it. I'm just asking why the 8 company felt that this was indicia of a 9 red flag?</p> <p>10 A. Again, this is another -- an 11 example, if they have cash only, we only 12 dispense products for cash, that would be 13 something that we would want to look into 14 and find out more information on the 15 pharmacy.</p> <p>16 Q. And why would you want to 17 look into that?</p> <p>18 A. Because it's one point of -- 19 it's one more point that could include a 20 pharmacy that we may not want to do 21 business with.</p> <p>22 These could be either for 23 existing customers or potential new 24 customers. We would not open up -- no</p>
<p style="text-align: right;">Page 391</p> <p>1 reports, one of my accounts has a big 2 line out the door.</p> <p>3 What would you do with that 4 information?</p> <p>5 MR. NICHOLAS: Object to the 6 form.</p> <p>7 THE WITNESS: Again, it's a 8 hypothetical. But we would find 9 out what was occurring at the 10 pharmacy, look at past purchasing 11 history. We would do an 12 investigation.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. What would past purchasing 15 history tell you?</p> <p>16 A. The volume, percentage, 17 types of products. Again, a full scope 18 of an investigation.</p> <p>19 Q. Let's look at the next 20 picture.</p> <p>21 It says, Red flag. And it's 22 got a picture in the window that says, No 23 insurance for any Roxicodone.</p> <p>24 Do you see that?</p>	<p style="text-align: right;">Page 393</p> <p>1 point in even doing the investigation. 2 We would not open up a customer that does 3 all cash.</p> <p>4 Q. What's the problem with a 5 customer that does all cash? Why is 6 that --</p> <p>7 A. It's just --</p> <p>8 Q. -- a potential thing that 9 you would be concerned about?</p> <p>10 A. It's just -- it's just not a 11 customer that we want to do business 12 with.</p> <p>13 Q. And why is that?</p> <p>14 A. Because it doesn't -- we 15 decided we're not going to do business 16 with certain types of customers. It 17 doesn't mean that there's a diversion 18 going on, it's just a customer that -- 19 again, we deal -- health products that 20 usually they service government, they 21 service private payer, public payer, 22 insurance, some cash business. And then 23 we want to see a full complement.</p> <p>24 It's just one more thing</p>

<p style="text-align: right;">Page 394</p> <p>1 that we put in our 590, to give us a good 2 picture of a customer before we start to 3 do business with them. 4 Q. Again, I'm not -- I didn't 5 come up with this example, you did. 6 And my question is, I 7 just -- I'm hearing that you're saying, 8 well, someone who does all cash is 9 someone that we don't want to do business 10 with. 11 But I'm not getting a clear 12 answer as to why that is not someone you 13 want to do business with? 14 MR. NICHOLAS: I'll object 15 to the form of the question and 16 the characterization of the 17 testimony. I think he's answered 18 the question. 19 But go ahead. 20 THE WITNESS: Because we 21 just don't want to do business. 22 We choose not to do business with 23 them. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 396</p> <p>1 investigation is, we just don't want to 2 choose to do business -- again, these are 3 all licensed -- both of these are 4 licensed pharmacies with the DEA and the 5 Board of Pharmacy. 6 Q. Do you know specifically 7 what pharmacies these are? 8 A. I don't. 9 Q. How do you know they're 10 licensed pharmacies? 11 A. Obviously, somebody went in 12 there, either -- they went to the 13 location and they took the picture. 14 I think this red -- one 15 line, I think, is from DEA, I believe. 16 Q. So you've seen that picture 17 before? 18 A. I believe so. 19 Q. How about this other one, 20 the one we're looking at now? 21 A. I mean, I see this picture, 22 yes. 23 Q. But you think that's -- you 24 said --</p>
<p style="text-align: right;">Page 395</p> <p>1 Q. How about a pharmacy like 2 this that says no insurance for -- 3 specifically for Roxicodone, a C-II 4 substance? 5 MR. NICHOLAS: Same 6 objection. 7 THE WITNESS: Isn't that 8 what -- isn't that what it says? 9 BY MR. PIFKO: 10 Q. It says Roxicodone. 11 A. And what was your question? 12 Q. I said a pharmacy 13 specifically that doesn't take insurance 14 for a Schedule II controlled substance, 15 is that a particular red flag? 16 A. It would depend on the 17 circumstances. I mean, it depends on the 18 area, and there are certain areas that 19 have a large cash business. 20 It depends on the -- again, 21 the totality of the information. This is 22 just one data point. A line is a data 23 point. A sign is a data point, one that 24 includes an investigation. And if our</p>	<p style="text-align: right;">Page 397</p> <p>1 A. I've seen -- 2 Q. -- the line was from DEA, 3 that was the prior picture. 4 I'm asking about this one. 5 A. I've seen these 6 presentations. I'm not sure where they 7 came from. 8 Q. But you know they're 9 licensed pharmacies? 10 A. I'm assuming they're 11 licensed, my assumption on my part. 12 Q. You're willing to assume 13 that? 14 MR. NICHOLAS: For the 15 purposes of right now answering 16 your question here? 17 MR. PIFKO: Again, you're 18 guiding him. You're guiding him. 19 MR. NICHOLAS: But you're 20 trying to create a very misleading 21 record. 22 MR. PIFKO: I'm not. I'm 23 asking questions. You're guiding 24 him. You're coaching him. You</p>

<p style="text-align: right;">Page 398</p> <p>1 literally are telling him --</p> <p>2 MR. NICHOLAS: I'm not --</p> <p>3 this is --</p> <p>4 MR. PIFKO: You're literally</p> <p>5 putting words into his mouth.</p> <p>6 You're asking him to say, yes, I'm</p> <p>7 admitting that for purposes of</p> <p>8 here.</p> <p>9 MR. NICHOLAS: You're</p> <p>10 just --</p> <p>11 MR. PIFKO: I'm being nice</p> <p>12 to you, but you're really over the</p> <p>13 top here.</p> <p>14 MR. NICHOLAS: If this is</p> <p>15 nice, I'd hate to see you when you</p> <p>16 weren't nice.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. Can you answer the question,</p> <p>19 please?</p> <p>20 A. Please, what was the</p> <p>21 question again?</p> <p>22 Q. How do you know that the</p> <p>23 picture in Number -- the second one that</p> <p>24 we're looking for in 142 is a licensed</p>	<p style="text-align: right;">Page 400</p> <p>1 to be aware of if it's a potential</p> <p>2 customer that they're looking to</p> <p>3 do business with.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. Is there a normal ratio of</p> <p>6 cash to insurance that you're aware of</p> <p>7 for pharmacies?</p> <p>8 MR. NICHOLAS: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: No, not that</p> <p>11 I'm aware of.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. At any point in your history</p> <p>14 working with the company, are you aware</p> <p>15 of some sort of ratio that's typical as</p> <p>16 far as cash to insurance for a pharmacy?</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form. I assume these are --</p> <p>19 you're asking him as an individual</p> <p>20 now?</p> <p>21 MR. PIFKO: Yes, that</p> <p>22 question was.</p> <p>23 MR. NICHOLAS: Okay.</p> <p>24 THE WITNESS: Not that I'm</p>
<p style="text-align: right;">Page 399</p> <p>1 pharmacy?</p> <p>2 A. I don't know for sure.</p> <p>3 Q. You've been telling me,</p> <p>4 hypothetical, I don't know this, I don't</p> <p>5 know that. But you're willing to just</p> <p>6 jump in and say you think it's a licensed</p> <p>7 pharmacy. That seems unusual to me.</p> <p>8 MR. NICHOLAS: Objection.</p> <p>9 Object to the form.</p> <p>10 THE WITNESS: The</p> <p>11 presentation is to the sales</p> <p>12 associates that deal with our</p> <p>13 customers, which are licensed</p> <p>14 pharmacies.</p> <p>15 So my -- again, maybe it was</p> <p>16 an assumption I shouldn't have</p> <p>17 made. But we give them</p> <p>18 indicators, these slides of</p> <p>19 examples of things, of red flags</p> <p>20 that they need to bring to our</p> <p>21 attention so we can do additional</p> <p>22 due diligence and investigation,</p> <p>23 if need be, if they're an existing</p> <p>24 customer; or things that they need</p>	<p style="text-align: right;">Page 401</p> <p>1 aware of.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Let's look at the next</p> <p>4 picture here.</p> <p>5 Have you seen this picture</p> <p>6 before?</p> <p>7 A. I have.</p> <p>8 Q. You have?</p> <p>9 A. In other presentations, yes.</p> <p>10 Q. Where do you believe you</p> <p>11 first saw this picture? In a DEA</p> <p>12 presentation or --</p> <p>13 A. I don't know. I don't</p> <p>14 recall.</p> <p>15 Q. Why is this a red flag?</p> <p>16 A. I would think because of the</p> <p>17 term "free samples."</p> <p>18 Q. It says, Pain Relief Center.</p> <p>19 What kind of free samples</p> <p>20 would be --</p> <p>21 A. I don't --</p> <p>22 Q. Don't know?</p> <p>23 A. Right.</p> <p>24 Q. Why is that a concern?</p>

<p style="text-align: right;">Page 402</p> <p>1 A. To find out what the free 2 samples are that they're giving out in a 3 pain relief center. 4 Q. Because they could be 5 controlled substances and you shouldn't 6 be giving those out for free, right? 7 A. It could be controlled. 8 That's the question, is what free samples 9 are they giving out? 10 Q. Let's look at the next 11 picture. 12 Have you seen this before? 13 A. I've seen this picture 14 before. 15 Q. What is this a picture of? 16 A. This is a picture of a 17 pharmacy. 18 Q. How do you know it's a 19 pharmacy? 20 A. Because that's -- when we 21 had the -- this was -- again, that's why 22 it's in the deck. 23 Q. Did you create the deck? 24 A. I did not create the deck.</p>	<p style="text-align: right;">Page 404</p> <p>1 nursing homes and has no foot traffic in. 2 It could be a legitimate reason. 3 But it's something that they 4 should acknowledge and report so that we 5 can confirm what type of business is 6 occurring, who the customer base is. And 7 that's the purpose of that slide there. 8 Q. Let's look at the next one. 9 Have you seen this before? 10 A. I don't recall seeing this 11 one before. 12 Q. Do you understand what it's 13 communicating here? 14 A. It's communicating that -- 15 it's communicating that people are in 16 Florida getting their prescriptions 17 filled. 18 Q. And they're not from 19 Florida, right? 20 MR. NICHOLAS: Object to the 21 form. You're asking him now in 22 his individual capacity, right? 23 Because this is not part of a 24 30(b)(6).</p>
<p style="text-align: right;">Page 403</p> <p>1 But I've seen this picture before and 2 it's been used in presentations, much 3 like with these other pictures, regarding 4 red flags when you visit a pharmacy. 5 Q. So you know for a fact this 6 is a pharmacy? 7 A. I don't know for a fact this 8 is a pharmacy. 9 Q. Why is this a potential red 10 flag? 11 A. Because there's nothing 12 going on here. There's nothing on the 13 walls, it looks like it's not even an 14 open business. 15 Q. And why is that a concern? 16 A. Because it doesn't look like 17 there's any business that's occurring 18 there. 19 Q. So why wouldn't you want to 20 sell controlled substances to this kind 21 of a pharmacy? 22 A. You may. It depends. It's 23 just another flag. I mean, it could be a 24 closed-door pharmacy that services</p>	<p style="text-align: right;">Page 405</p> <p>1 MR. PIFKO: It's a training 2 document about the company's 3 diversion policies. 4 MR. NICHOLAS: Object to the 5 scope. Object to the form. 6 Go ahead. 7 THE WITNESS: That's what 8 the comic infers. 9 BY MR. PIFKO: 10 Q. That they're out-of-state 11 people coming to Florida to buy pills, 12 right? 13 A. It doesn't say out of state. 14 Q. It says, tourists. 15 Tourists, thank God. May I suggest 16 restaurants? Hotels? Destinations? 17 And the guy says back, We're 18 just here to buy some pills -- some pain 19 pills. 20 So it's suggesting that 21 they're from out of state. 22 A. Suggesting they're tourists. 23 Q. And they came from out of 24 state to Florida, he has a shirt that</p>

<p style="text-align: right;">Page 406</p> <p>1 says Florida, to buy pills?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. Is that what it's saying?</p> <p>6 A. It's not saying they're from</p> <p>7 out of state. But that's what it's</p> <p>8 inferring, that tourists are buying pills</p> <p>9 in Florida.</p> <p>10 Q. That's consistent with the</p> <p>11 issue that we talked about in Exhibit-12,</p> <p>12 do you recall that? The HDMA meeting</p> <p>13 with the DEA, people coming to Florida to</p> <p>14 buy pills and take them to other states.</p> <p>15 Do you recall that?</p> <p>16 A. Yes.</p> <p>17 Q. This is consistent with that</p> <p>18 idea, right?</p> <p>19 MR. NICHOLAS: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: That's --</p> <p>22 that's what this is inferring,</p> <p>23 yes, this comic strip.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 408</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. It's what you said it was.</p> <p>3 A. It's -- yes, a presentation</p> <p>4 to the sales group. Yes.</p> <p>5 Q. So the company is</p> <p>6 acknowledging that there are -- there is</p> <p>7 an issue with people from out of state</p> <p>8 buying pills somewhere, agree?</p> <p>9 MR. NICHOLAS: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: It indicates</p> <p>12 that that is another flag that</p> <p>13 should be considered, correct.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. This is a comic.</p> <p>16 Does the company think that</p> <p>17 diversion is a -- is funny?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form. That's a pretty obnoxious</p> <p>20 question.</p> <p>21 THE WITNESS: Absolutely</p> <p>22 not.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. Does the company take its</p>
<p style="text-align: right;">Page 407</p> <p>1 Q. So as of the date of this</p> <p>2 document, the company knew that that was</p> <p>3 a concern, agree?</p> <p>4 A. It was another -- again, I</p> <p>5 don't know who put this in here and what</p> <p>6 the inference of the comic strip was.</p> <p>7 It's not a picture of the red flags like</p> <p>8 the previous ones are.</p> <p>9 But that's the inference, is</p> <p>10 that people were coming to Florida to get</p> <p>11 their prescriptions filled.</p> <p>12 Q. And then it says, Coming to</p> <p>13 a state near you.</p> <p>14 A. That's the title.</p> <p>15 Q. What does that mean?</p> <p>16 A. I don't know.</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form.</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. This is a company training</p> <p>21 document about diversion control</p> <p>22 practices, agree?</p> <p>23 MR. NICHOLAS: Object to the</p> <p>24 form.</p>	<p style="text-align: right;">Page 409</p> <p>1 diversion control practices serious?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know why they would</p> <p>4 use a comic in a document like this to</p> <p>5 communicate this message?</p> <p>6 MR. NICHOLAS: I'll object</p> <p>7 to the form.</p> <p>8 THE WITNESS: It's the slide</p> <p>9 that's -- that's the slide that --</p> <p>10 I mean, I'm not sure what your</p> <p>11 question is.</p> <p>12 Why would they pick this</p> <p>13 slide?</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. And use humor to communicate</p> <p>16 something serious like this.</p> <p>17 MR. NICHOLAS: I'll object</p> <p>18 to the form and to the</p> <p>19 offensiveness of the question.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: I don't think</p> <p>22 it's depicted in humor. I think</p> <p>23 it's stating another red flag, if</p> <p>24 you see people that are not from</p>

<p style="text-align: right;">Page 410</p> <p>1 the area getting their 2 prescription filled. 3 BY MR. PIFKO: 4 Q. Did the company do anything 5 to address the potential for out-of-state 6 people potentially coming somewhere and 7 buying pills from a pharmacy? 8 A. We have no control over 9 where people go and get their 10 prescriptions filled. We don't know 11 where they come from. 12 Q. It says, Coming to a state 13 near you. 14 Do you know if the company 15 conducted any research about people pill 16 shopping in different states? 17 MR. NICHOLAS: Object to the 18 form. We're here on the Track 1 19 case, or cases. So I want to make 20 sure that the record is clear that 21 these questions are pertaining to 22 the Track 1 jurisdictions. 23 MR. PIFKO: I'm asking about 24 the company's policies right now.</p>	<p style="text-align: right;">Page 412</p> <p>1 about that? 2 A. No. 3 Q. The last page has some 4 individuals. 5 We talked about Ed? 6 A. Yes. 7 Q. Do you know who he is? 8 A. Ed Hazewski? Yes, director 9 of diversion control. 10 Q. How about the other people 11 in here? 12 A. Dave Breitmayer was in the 13 diversion control group, as well as Kevin 14 Kreutzer. And I'm not sure if their 15 title is investigator or specialist, but 16 they're in the diversion control group, 17 as well as Joe Tomkiewicz. 18 MR. PIFKO: Let's take a 19 break. 20 VIDEO TECHNICIAN: Going off 21 the record. The time is 4:40 p.m. 22 - - - 23 (Whereupon, a brief recess 24 was taken.)</p>
<p style="text-align: right;">Page 411</p> <p>1 MR. NICHOLAS: As they 2 pertain -- well, you're asking 3 specific questions. 4 BY MR. PIFKO: 5 Q. Do you need me to read back 6 the question? 7 A. Yes. I didn't know, was 8 there a policy question? 9 Q. I said, it says, Coming to a 10 state near you. 11 Do you know if the company 12 conducted any research about people pill 13 shopping in different states? 14 A. No. 15 Q. Have you heard the term 16 "blue highway" before? 17 A. No. 18 Q. You don't know what that is? 19 A. I have not heard that term. 20 Q. How about The Oxy Express, 21 have you heard of that before? 22 A. I'm not sure what it's in 23 reference to, but -- 24 Q. You don't know anything</p>	<p style="text-align: right;">Page 413</p> <p>1 - - - 2 VIDEO TECHNICIAN: We're 3 back on the record at 5:00 p.m. 4 BY MR. PIFKO: 5 Q. Does AmerisourceBergen take 6 it upon itself to obtain information 7 about pill mill doctors in connection 8 with its diversion control program? 9 MR. NICHOLAS: Are we in 10 30(b)(6) time here? 11 MR. PIFKO: Yes. 12 THE WITNESS: As I 13 indicated, part of our 590 is to 14 ask for prescriber data. I mean, 15 that's the information we gather. 16 I'm not sure whether -- we 17 don't know whether -- what these 18 doctors are associated with. But 19 we do collect physician 20 information. 21 BY MR. PIFKO: 22 Q. Do you have a process for 23 collecting information, from anywhere, 24 about pill mill, bad doctors?</p>

<p style="text-align: right;">Page 414</p> <p>1 A. We -- no. We collected the 2 information on the top prescribers. But 3 no, we don't have a database. 4 Q. If you had information that 5 there was a pill mill doctor in an area, 6 would you tell a pharmacy about it? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: I don't know 10 how we would know that 11 information. 12 BY MR. PIFKO: 13 Q. If you did know it -- 14 A. I don't -- again, I don't 15 see how we would have that information 16 unless -- again, we vet our pharmacy 17 customers. We don't just vet doctors. I 18 mean, it's not -- that's not who -- 19 that's not our process. 20 Our process is, the 21 pharmacies that we distribute to, that we 22 ask for their prescribers they have on 23 there and then we see if there's any 24 action taken against them.</p>	<p style="text-align: right;">Page 416</p> <p>1 don't think we have an obligation, 2 not knowing the specific 3 circumstances of whatever that 4 information that they receive. So 5 I -- I don't know. 6 BY MR. PIFKO: 7 Q. You don't know or -- 8 A. Yeah, I said that -- can you 9 ask the question one more time? Because 10 I think I answered it, but I'll answer it 11 again. 12 Q. Let's ask a simpler 13 question. 14 Does AmerisourceBergen 15 maintain a database where it keeps 16 information about bad doctors? 17 A. Not that I'm aware of. 18 Q. If you received such 19 information, what would you do with it? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: I don't know 23 what that information would be. 24 If it was information regarding a</p>
<p style="text-align: right;">Page 415</p> <p>1 Q. And if one of your 2 manufacturers -- or what you call the 3 manufacturers, you're the customer of the 4 manufacturer of pharmaceuticals, if they 5 told you about pill mill doctors, what 6 would you do with that information? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: I'm really not 10 sure what information they would 11 provide, and, again, in what 12 context. 13 BY MR. PIFKO: 14 Q. If they had information 15 from, like, the things we were talking 16 about, seeing lines out the door or 17 something, from their own operations and 18 they shared that with you, would you 19 share it with a pharmacy? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: I am not 23 sure -- I am not sure what that 24 information would be. Again, I</p>	<p style="text-align: right;">Page 417</p> <p>1 doctor that -- again, I hate to 2 speculate. 3 But if it had to do with one 4 of our pharmacy customers, then we 5 would look into that. 6 BY MR. PIFKO: 7 Q. What if Allergan sent you a 8 list of bad doctors and said, we know 9 about these pill mill doctors, what would 10 you do with it? 11 MR. NICHOLAS: Object to the 12 form. 13 THE WITNESS: I don't know. 14 I mean, I'd have to see the list. 15 I don't know what the context is 16 behind the list. I don't know 17 what the documentation of -- of -- 18 that Allergan is concluding that 19 they're pill mill doctors. 20 I'm not -- it all depends on 21 what the information is and how 22 they arrived at that information. 23 BY MR. PIFKO: 24 Q. What if they had a news</p>

<p style="text-align: right;">Page 418</p> <p>1 story that was about a physician getting 2 his office raided because he was a pill 3 mill doctor and they sent that to you, 4 what would you do with that information? 5 MR. NICHOLAS: Object to the 6 form. 7 THE WITNESS: We would 8 verify to see if it was a customer 9 of ours. 10 BY MR. PIFKO: 11 Q. I'm talking about a doctor, 12 though. 13 You don't -- do you sell 14 directly to doctors? 15 A. We could -- if it was a 16 clinic, sometimes we will sell to a 17 doctor, because clinics usually aren't 18 licensed. So it depends upon the 19 practice. 20 Q. So what I'm asking, though, 21 is if you found out and verified a news 22 story about a legal issue with a doctor 23 being raided because he was a pill mill, 24 would you tell pharmacies in the area</p>	<p style="text-align: right;">Page 420</p> <p>1 inability to give specifics, it doesn't 2 sound like you have a standard protocol 3 for dealing with that kind of 4 information. 5 Would you agree with me 6 about that? 7 A. We have a protocol when we 8 receive information, that we investigate. 9 And, again, I don't 10 understand what information you're 11 talking about; depending on what that 12 information is depends upon what kind of 13 investigation is done, if any. 14 Q. If you had information that 15 a doctor in an area lost their license, 16 would you undertake an effort to learn if 17 your pharmacy clients were filling 18 prescriptions from that doctor? 19 A. I don't know. 20 Q. Do you have an established 21 procedure for doing that now? 22 A. Again, I'm not sure how that 23 information is coming in and what the 24 diversion control group does with that</p>
<p style="text-align: right;">Page 419</p> <p>1 about that information? 2 MR. NICHOLAS: Object to the 3 form. 4 THE WITNESS: I don't know. 5 I don't think so. 6 BY MR. PIFKO: 7 Q. Would you undertake any 8 investigation to learn if a pharmacy was 9 filling prescriptions from that doctor? 10 A. I don't know. 11 Q. Are you aware of a process 12 the company has to do that? 13 A. It depends on the 14 information as it comes into the 15 diversion control group. Again, I 16 don't -- I would need to understand the 17 information coming in and what the 18 circumstances are and if they have that 19 information. 20 I can't tell you here, right 21 now, what their investigation process 22 was, given this information that I'm not 23 really sure that you're referring to. 24 Q. Well, so based on your</p>	<p style="text-align: right;">Page 421</p> <p>1 information, based upon the circumstances 2 of whatever occurred with that doctor. 3 Q. So if I sent you the name of 4 a doctor who had been -- lost her license 5 in the Philadelphia area, it was 6 verified, would you tell any pharmacies 7 in the area? 8 MR. NICHOLAS: Object to the 9 form. 10 THE WITNESS: Again, 11 you're -- it's a hypothetical. I 12 don't know the basis of the 13 revocation of the license. We 14 can't just send notices out of -- 15 to pharmacies disparaging a 16 doctor. I'm not sure what the 17 circumstances are. 18 And the pharmacy has a 19 requirement that they also need to 20 ensure -- they have a regulatory 21 responsibility to ensure they only 22 fill prescriptions from 23 appropriately licensed doctors. 24 BY MR. PIFKO:</p>

Page 422

1 Q. And would you undertake any
2 effort to learn that a pharmacy wasn't --
3 was filling prescriptions from a doctor
4 who wasn't licensed?
5 MR. NICHOLAS: Object to the
6 form.
7 THE WITNESS: We would not
8 know all the doctors that they're
9 filling prescriptions for. You
10 know, we ask for the top
11 prescribers out of the due
12 diligence process.
13 But if they're filling
14 prescriptions for 30 different
15 doctors and one of the 30 had
16 their license revoked, we wouldn't
17 know that.
18 BY MR. PIFKO:
19 Q. Would it bother you to know
20 that you sold pills to a pharmacy that
21 was filling orders from an unlicensed
22 doctor?
23 MR. NICHOLAS: Object to the
24 form. You mean personally? Or the

Page 423

1 company? When? Can you be more
2 specific?
3 THE WITNESS: Again, it
4 depends -- we can't control who
5 the pharmacy fills their
6 prescriptions for. We have to
7 ensure that the pharmacies that we
8 do business with are appropriately
9 licensed.
10 And if a pharmacy has --
11 again, I don't know the
12 circumstances of the case, if
13 you're referring to a case or if
14 this is a hypothetical. But if
15 the pharmacy was filling
16 prescriptions from a doctor that
17 wasn't licensed, then, yes, that
18 would bother me.
19 BY MR. PIFKO:
20 Q. Why would that bother you?
21 A. Because they weren't meeting
22 their regulatory responsibilities.
23 Q. But that's not information
24 that you seek to obtain on your own?

Page 424

1 MR. NICHOLAS: Object to the
2 form.
3 THE WITNESS: What
4 information?
5 BY MR. PIFKO:
6 Q. Information about whether a
7 customer is filling prescriptions from an
8 unlicensed doctor.
9 A. No, that's not a
10 requirement. Our requirement is to
11 ensure that we sell to licensed
12 pharmacies. The pharmacies have an
13 obligation, a regulatory obligation, to
14 ensure that the prescriptions that they
15 fill are coming from licensed physicians.
16 I mean, it's part of the
17 closed loop, closed distribution. Each
18 segment has their responsibilities in
19 order -- in order to ensure compliance.
20 Q. What about recordkeeping
21 with respect to controlled substances; do
22 you understand that pharmacies have
23 recordkeeping obligations?
24 A. I would assume so, yes.

Page 425

1 Q. You have recordkeeping
2 obligations, right, about what comes in
3 and what goes out?
4 A. Yes. We have recordkeeping
5 responsibilities.
6 Q. And what's that designed to
7 detect?
8 MR. NICHOLAS: Object to the
9 form.
10 THE WITNESS: It depends
11 upon what recordkeeping. I mean,
12 we have invoices. We have pick
13 tickets. We have receiving
14 documents. We have inventory
15 records.
16 BY MR. PIFKO:
17 Q. What I'm getting at is, one
18 of the things that recordkeeping is
19 designed to detect is loss or theft,
20 right?
21 A. I mean, there's
22 recordkeeping requirements to ensure that
23 you have an accountability for the
24 products that you've received and

<p style="text-align: right;">Page 426</p> <p>1 distributed.</p> <p>2 Q. Well, if I know that I took</p> <p>3 10,000 pills in and I sold 8,000 but I</p> <p>4 have nothing left in my store, that's</p> <p>5 something I want to know because maybe</p> <p>6 they got stolen or, you know, there's an</p> <p>7 issue there. That's part of why you keep</p> <p>8 records.</p> <p>9 Can we agree about that?</p> <p>10 A. For accountability, yes.</p> <p>11 Q. Yes, okay.</p> <p>12 So if you knew that a</p> <p>13 pharmacy wasn't maintaining accurate</p> <p>14 records to control for theft or loss, is</p> <p>15 that something you would want to know</p> <p>16 about?</p> <p>17 MR. NICHOLAS: Wait a</p> <p>18 minute. I'll object to the form</p> <p>19 of the question. None of this is</p> <p>20 within the scope of the topics.</p> <p>21 You're asking him about a</p> <p>22 pharmacy's obligations. And that</p> <p>23 is not one of the topics.</p> <p>24 MR. PIFKO: Again, the</p>	<p style="text-align: right;">Page 428</p> <p>1 pharmacies' recordkeeping</p> <p>2 requirements.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. Do you undertake any due</p> <p>5 diligence to ensure that the pharmacies</p> <p>6 to whom you're selling are complying with</p> <p>7 their recordkeeping requirements?</p> <p>8 MR. NICHOLAS: Objection to</p> <p>9 form. Objection to scope.</p> <p>10 THE WITNESS: In the course</p> <p>11 of an investigation, we may look</p> <p>12 deeper at what's occurring at the</p> <p>13 pharmacy. Depending upon --</p> <p>14 again, depending upon the</p> <p>15 circumstances of the incident.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. As a general matter, you</p> <p>18 don't seek to collect information about a</p> <p>19 pharmacy's recordkeeping obligations?</p> <p>20 MR. NICHOLAS: Same</p> <p>21 objection.</p> <p>22 THE WITNESS: No. That's</p> <p>23 the pharmacy's obligations.</p> <p>24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 427</p> <p>1 speaking objections are over the</p> <p>2 top.</p> <p>3 MR. NICHOLAS: But you're</p> <p>4 not -- you're outside the scope.</p> <p>5 MR. PIFKO: It's about the</p> <p>6 diversion control policies, okay?</p> <p>7 We can argue -- all you say is</p> <p>8 objection, scope, and we can argue</p> <p>9 about what it is or what it isn't</p> <p>10 afterwards.</p> <p>11 It's really over the top,</p> <p>12 what you're doing.</p> <p>13 MR. NICHOLAS: This isn't a</p> <p>14 topic -- I have to be able to say</p> <p>15 it's not a topic.</p> <p>16 MR. PIFKO: You can say</p> <p>17 objection, scope. And we --</p> <p>18 that's the end of it. We can</p> <p>19 fight about it all you want later.</p> <p>20 THE WITNESS: So our</p> <p>21 policies are with respect to</p> <p>22 recordkeeping for</p> <p>23 AmerisourceBergen distribution.</p> <p>24 We don't have policies regarding</p>	<p style="text-align: right;">Page 429</p> <p>1 Q. Would it concern you if you</p> <p>2 sold opioid pills to a pharmacy that had</p> <p>3 significant unreported theft?</p> <p>4 MR. NICHOLAS: Objection to</p> <p>5 form. And objection to scope.</p> <p>6 Are you asking him</p> <p>7 individually?</p> <p>8 THE WITNESS: Can you ask</p> <p>9 the question one more time?</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. Would it concern you if you</p> <p>12 sold opioid pills to a pharmacy that had</p> <p>13 significant unreported theft?</p> <p>14 MR. NICHOLAS: Same</p> <p>15 objection to the same question.</p> <p>16 THE WITNESS: And, again, it</p> <p>17 would depend upon the</p> <p>18 circumstances. I don't know -- I</p> <p>19 would need to understand the -- I</p> <p>20 need to understand the</p> <p>21 information.</p> <p>22 You're giving me, again, a</p> <p>23 hypothetical where a pharmacy has</p> <p>24 internal theft, and would I be</p>

Page 430

1 concerned? Well, I would be
2 concerned, if they had internal
3 theft for the pharmacy. And we
4 would definitely -- but it's
5 far -- I don't know the specifics
6 that -- I don't have any
7 specifics. You're not giving me
8 any specifics.

9 BY MR. PIFKO:
10 Q. I'm going to go back to
11 document Number 10.
12 Let me know when you're
13 there.
14 A. Yes.
15 Q. We discussed this earlier
16 this morning. I want to direct you to
17 the middle of the document.
18 It says, CSRA continues to
19 work with sales and distribution center
20 management to establish adequate
21 threshold levels for retail pharmacies to
22 provide protection to AmerisourceBergen,
23 while limiting the impact to
24 AmerisourceBergen accounts.

Page 431

1 Do you see that?
2 A. Yes.
3 Q. Is that how the company
4 designs its diversion control policies,
5 by seeking to provide protection to the
6 company while limiting impact to its
7 accounts?
8 MR. NICHOLAS: Objection to
9 the form.
10 THE WITNESS: We develop our
11 programs to ensure compliance with
12 regulatory requirements, which is
13 protecting the company.
14 BY MR. PIFKO:
15 Q. What about limiting the
16 impact to AmerisourceBergen's accounts?
17 MR. NICHOLAS: Objection to the
18 form.
19 THE WITNESS: I'm not sure
20 what limiting the impact to ABC
21 accounts is.
22 BY MR. PIFKO:
23 Q. Does AmerisourceBergen have
24 interest in protecting anyone other than

Page 432

1 itself when it complies with The
2 Controlled Substances Act?
3 MR. NICHOLAS: Object to the
4 form.
5 THE WITNESS: I think, as I
6 indicated before, that we provide
7 a valuable service to the supply
8 chain. And one that we take
9 seriously. And one that -- again,
10 if we don't follow the rules and
11 regulations, then we can't supply
12 these medications to pharmacies
13 and hospitals. So we take our
14 responsibility very seriously.
15 And by implementing our
16 policy and procedures and ensuring
17 we follow them protects our
18 customers, because they wouldn't
19 be able to access these products
20 if we weren't able to sell them to
21 them.
22 MR. PIFKO: I'm going to
23 play a video.
24 (A video was shown.)

Page 433

1 MR. NICHOLAS: Before you
2 ask --
3 BY MR. PIFKO:
4 Q. Did you think --
5 MR. NICHOLAS: -- a
6 question, I'm going to interpose
7 an objection to the playing of
8 this video in this context in this
9 deposition.
10 I think it's totally
11 inappropriate, and I object to it.
12 BY MR. PIFKO:
13 Q. Did you think that you
14 should be providing protection to anyone
15 else other than AmerisourceBergen when
16 implementing your diversion control
17 practices?
18 MR. NICHOLAS: I object to
19 the form of the question. It's
20 outside the scope. It's an
21 inappropriate question. It
22 doesn't seek any information
23 that's pertinent to any of the
24 topics on your list. I object to

<p style="text-align: right;">Page 434</p> <p>1 it.</p> <p>2 THE WITNESS: Your question?</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. Having seen the video, do</p> <p>5 you think that you should provide</p> <p>6 protection to anyone else besides</p> <p>7 yourself when you're implementing your</p> <p>8 diversion control practices?</p> <p>9 MR. NICHOLAS: I'll object</p> <p>10 to the form of the question. It</p> <p>11 mischaracterizes prior testimony.</p> <p>12 THE WITNESS: As I</p> <p>13 indicated, that we take our</p> <p>14 responsibility very seriously,</p> <p>15 regardless of the video.</p> <p>16 I understand about the</p> <p>17 opioid crisis, and it doesn't --</p> <p>18 it's impacted my family as well.</p> <p>19 It's impacted a lot of our</p> <p>20 employees as well. We understand</p> <p>21 what the circumstances are.</p> <p>22 And no, we aren't just about</p> <p>23 protecting AmerisourceBergen. We</p> <p>24 have a job to do. We have a job</p>	<p style="text-align: right;">Page 436</p> <p>1 And in order to do so, we</p> <p>2 need to continue to do our</p> <p>3 business diligently and in</p> <p>4 compliance and in a safe -- in a</p> <p>5 safe manner, to ensure that</p> <p>6 product supply to the hospitals</p> <p>7 and pharmacies and doctors is</p> <p>8 available. So it's not just about</p> <p>9 AmerisourceBergen.</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. This is one of the biggest</p> <p>12 public health crises in America. And you</p> <p>13 guys are in the center of it.</p> <p>14 Do you think that you could</p> <p>15 have done more to protect the communities</p> <p>16 around you?</p> <p>17 MR. NICHOLAS: I'll object</p> <p>18 to the form of the question. It's</p> <p>19 argument. It's unfair.</p> <p>20 I'm going to let him answer.</p> <p>21 THE WITNESS: I've</p> <p>22 explained -- I've explained the</p> <p>23 process and the safeguards that we</p> <p>24 have in place and the things that</p>
<p style="text-align: right;">Page 435</p> <p>1 to make sure that the medications</p> <p>2 that we receive are properly</p> <p>3 stored and secure, in order to</p> <p>4 make them available for customers</p> <p>5 and patients that need them.</p> <p>6 These are -- these drugs are</p> <p>7 approved by the FDA. And we sell</p> <p>8 them to licensed pharmacists who</p> <p>9 fill prescriptions written by a</p> <p>10 licensed doctor.</p> <p>11 Again, I'm not -- what we do</p> <p>12 is to ensure that the integrity of</p> <p>13 the product makes it to a licensed</p> <p>14 pharmacy in order for the patient</p> <p>15 to have that product available.</p> <p>16 We implement our policy and</p> <p>17 procedures to ensure that we don't</p> <p>18 have diversion. And that is the</p> <p>19 responsibility we take, not just</p> <p>20 because -- just looking out for</p> <p>21 AmerisourceBergen, we supply 30</p> <p>22 percent of the -- 25 to 30 percent</p> <p>23 of the products within the United</p> <p>24 States.</p>	<p style="text-align: right;">Page 437</p> <p>1 we've done and the training that</p> <p>2 we've done in this area.</p> <p>3 It's a crisis. I don't know</p> <p>4 why, when we had a methamphetamine</p> <p>5 crisis, that there was call to</p> <p>6 action by legislature to include</p> <p>7 additional requirements. I'm not</p> <p>8 sure why they didn't do that in</p> <p>9 1990, '91, '92, all the way to</p> <p>10 today. They issue a guidance --</p> <p>11 they issue -- DEA has issued</p> <p>12 guidance letters.</p> <p>13 And if it's a crisis, I</p> <p>14 would expect them to have a</p> <p>15 call-to-arms and have everybody</p> <p>16 come to Washington, D.C. and --</p> <p>17 like we did with the chemicals,</p> <p>18 and create a solution, or at least</p> <p>19 work on a solution.</p> <p>20 We are -- as a private</p> <p>21 industry, we are trying to do --</p> <p>22 we are not trying to do, we are</p> <p>23 doing what we need to do to</p> <p>24 protect the supply channel with</p>

<p style="text-align: right;">Page 438</p> <p>1 the information that we have and 2 that's available to us. 3 And we take that very 4 seriously. I take that very 5 seriously. The company takes it 6 very seriously. 7 BY MR. PIFKO: 8 Q. Do you think that you have 9 any responsibility for the opioid crisis? 10 MR. NICHOLAS: Object to the 11 form of the question. It's 12 outside the scope. 13 Go ahead. 14 THE WITNESS: As I 15 indicated, that our responsibility 16 in the opioid crisis is to ensure 17 that those products that we buy 18 from the manufacturers that have 19 been -- that have been approved by 20 DEA, through quotas to manufacture 21 and distribute, and our job is to 22 make sure when those opioids are 23 within our control, that we 24 maintain adequate security for</p>	<p style="text-align: right;">Page 440</p> <p>1 for identification.) 2 - - - 3 BY MR. PIFKO: 4 Q. I'm handing you what has 5 been marked as Exhibit-15. 6 A. Thank you. 7 Q. For the record, this is a 8 March 2017 code of ethics and business 9 conduct of AmerisourceBergen, which was 10 obtained from the company's website. I 11 just want to ask you a quick couple of 12 questions about this. 13 You're the chief compliance 14 officer, right? 15 A. Correct. 16 Q. You have responsibility -- 17 MR. NICHOLAS: These are in 18 his individual capacity; is that 19 right? 20 MR. PIFKO: Yes. 21 BY MR. PIFKO: 22 Q. You have responsibility for 23 this document? 24 A. Yes.</p>
<p style="text-align: right;">Page 439</p> <p>1 those products, and recordkeeping. 2 We also make sure that we 3 vet our customers that we sell to, 4 which are licensed pharmacies by 5 the DEA and the Board of Pharmacy. 6 And we distribute those products 7 in a safe and secure manner. 8 BY MR. PIFKO: 9 Q. Do you think you've done 10 enough? 11 A. I think we are doing -- we 12 are always continuing to try to do more. 13 We're continually working with our 14 partners. We've been working with 15 legislation to try to create solutions 16 that would impact distribution that may 17 help in this situation. And we continue 18 to do that. 19 - - - 20 (Whereupon, Amerisource 21 Bergen-Zimmerman Exhibit-15, No 22 Bates, March 2017 23 AmerisourceBergen Code of Ethics 24 and Business Conduct, was marked</p>	<p style="text-align: right;">Page 441</p> <p>1 Q. This document doesn't 2 mention The Controlled Substances Act 3 once. 4 You can look through it, but 5 would you agree with me? 6 A. I don't know. I mean, I can 7 read it. 8 Q. I'll represent to you it 9 doesn't refer to The Controlled 10 Substances Act. You can look at the 11 table of contents here, compliance with 12 laws, Page I here. 13 Is The Controlled Substances 14 Act one of the laws that's mentioned 15 here? 16 MR. NICHOLAS: I'll object 17 to the form of the question. 18 You probably need to read 19 the entire document to really 20 answer a question like this. 21 But go ahead. 22 THE WITNESS: What was your 23 question? I'm sorry. 24 BY MR. PIFKO:</p>

<p style="text-align: right;">Page 442</p> <p>1 Q. It's got a discussion of 2 compliance with laws here in the table of 3 contents. 4 A. Okay. 5 Q. You agree that The 6 Controlled Substances Act is not one of 7 those laws that's listed here? 8 MR. NICHOLAS: Object to the 9 form. I'll object to the form. I 10 think the question is misleading. 11 THE WITNESS: In the section 12 that says, Associates must comply 13 with all applicable laws, 14 regulations and rules, including 15 but not limited to those described 16 below. 17 BY MR. PIFKO: 18 Q. Does it mention The 19 Controlled Substances Act? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: It doesn't 23 state that. 24 - - -</p>	<p style="text-align: right;">Page 444</p> <p>1 remembers or knows. 2 MR. PIFKO: You're coaching 3 him. 4 MR. NICHOLAS: Well, this is 5 just housekeeping. It's silly. 6 It's stupid. 7 THE WITNESS: Your question 8 was? 9 BY MR. PIFKO: 10 Q. Is this a true and correct 11 copy of the document that was -- 12 A. It appears to be. It 13 appears to be. 14 Q. Okay. Is this from your 15 files? 16 MR. NICHOLAS: Objection to 17 the form. 18 THE WITNESS: I don't know 19 where it came from. 20 BY MR. PIFKO: 21 Q. What is this document? Can 22 you tell me what it is? 23 A. It looks like -- it looks 24 like a series of org charts.</p>
<p style="text-align: right;">Page 443</p> <p>1 (Whereupon, Amerisource 2 Bergen-Zimmerman Exhibit-16, No 3 Bates, West Virginia Case 4 Document, Organization Charts, was 5 marked for identification.) 6 - - - 7 BY MR. PIFKO: 8 Q. I'm handing you what is 9 marked as Exhibit-16. It's a document 10 that was used in your deposition in the 11 West Virginia litigation. 12 Do you recall this document? 13 A. Yes. I believe from the 14 West Virginia case. 15 Q. Do you agree this is a true 16 and correct copy of the exhibit that 17 was -- 1 was attached to your West 18 Virginia litigation as referenced here on 19 the first page of the document? 20 MR. NICHOLAS: Object to the 21 form -- 22 THE WITNESS: Do I -- 23 MR. NICHOLAS: -- in the 24 sense that I don't know if he</p>	<p style="text-align: right;">Page 445</p> <p>1 Q. Is this an accurate 2 depiction of the -- your department, the 3 CSRA? 4 MR. NICHOLAS: When? 5 THE WITNESS: Yeah, which -- 6 BY MR. PIFKO: 7 Q. Well, it's got various 8 periods on it. The whole document. 9 MR. NICHOLAS: I think you 10 have to focus the question for 11 him. 12 THE WITNESS: Which one? 13 BY MR. PIFKO: 14 Q. Every single page, you're at 15 the top. 16 MR. NICHOLAS: I'll object 17 to the form. I'm not seeing any 18 dates on the document at all. 19 THE WITNESS: I don't see 20 any dates either. 21 BY MR. PIFKO: 22 Q. Your name is at the top of 23 each one of these pages, correct? 24 A. But what year?</p>

Page 446

1 Q. You're going to tell me.
2 You're the expert here. It's your
3 department. This is your document, not
4 mine.
5 Let's look at the first
6 page.
7 A. Okay.
8 Q. That's your name at the top
9 of this, right?
10 A. Yes.
11 Q. When you look at this and
12 see the people here and the positions
13 here, can you tell me when this was?
14 MR. NICHOLAS: Objection.
15 Outside the scope. Object to the
16 form.
17 THE WITNESS: Possibly 2007.
18 I'm not sure exactly.
19 BY MR. PIFKO:
20 Q. It says, Associates assigned
21 to provide resources for the diversion
22 control program.
23 Do you see that? On the
24 left at the top, under the word, Current.

Page 447

1 A. Yes.
2 Q. And then underneath there,
3 it says, Everyone already has a full-time
4 job.
5 Do you see that?
6 A. Yes.
7 Q. That's because the people
8 responsible to provide resources for the
9 diversion control program had other
10 responsibilities, right?
11 MR. NICHOLAS: Object to the
12 form.
13 THE WITNESS: We already had
14 diversion control. We just --
15 this is in 2007. So part of their
16 jobs was already in diversion
17 control.
18 BY MR. PIFKO:
19 Q. Part of their job what?
20 A. Was part -- was for
21 diversion control.
22 Q. Right. So all of these
23 people had other jobs as well, correct?
24 MR. NICHOLAS: Object to the

Page 448

1 form.
2 THE WITNESS: In a sense
3 they had other duties in addition
4 to diversion control. As we
5 indicated with investigations,
6 they also investigated theft. You
7 had -- you have regional directors
8 that also ensure compliance with
9 other -- not just the controlled
10 substance requirements but also
11 security and prescription drug
12 requirements that always had
13 controlled substances and
14 diversion as well.
15 BY MR. PIFKO:
16 Q. Let's look -- can you point
17 me to where the investigations department
18 is? Who it that -- who is on this first
19 page?
20 A. Bruce Gundy.
21 Q. So there's four
22 investigators underneath him?
23 A. Correct.
24 Q. Does he perform

Page 449

1 investigations himself?
2 A. Yes.
3 Q. If we look at the next page,
4 there's Bruce Gundy.
5 And how many people are
6 under him?
7 A. Three.
8 Q. The next page?
9 A. I can't really read it.
10 Q. It's next to Mr. Hazewski.
11 MR. NICHOLAS: Hazewski.
12 MR. PIFKO: Sorry.
13 THE WITNESS: Are you
14 referring to Bruce or Ed?
15 BY MR. PIFKO:
16 Q. Bruce.
17 You were trying to look for
18 his department. How many people were
19 in --
20 A. Yes.
21 Q. -- his department on the
22 third page?
23 A. He has two.
24 Q. Two.

<p style="text-align: right;">Page 450</p> <p>1 And then let's look at the 2 next page, how many? 3 A. Two. 4 Q. And the last page? 5 A. Two. 6 Q. And all those investigators 7 have duties other than diversion control, 8 correct? 9 MR. NICHOLAS: Object to the 10 form. 11 THE WITNESS: Yes. But 12 as -- so after the first one, 13 there's a diversion control 14 department, which had 15 investigators contained within 16 there that moved from Bruce to 17 diversion control. 18 So now you had diversion 19 control doing investigations, as 20 well as Bruce's people doing 21 investigations. 22 The regional directors also 23 performed investigations, and same 24 with the senior directors as well.</p>	<p style="text-align: right;">Page 452</p> <p>1 marked as Exhibit-17. 2 Have you seen this before? 3 It's ABDCMDL 00251392 through 94. I just 4 have some quick questions about this. 5 Are you familiar with this 6 policy and procedure? 7 A. I've seen it, yes. 8 Q. It says that this is retail 9 pharmacy targeted visits. 10 What is that? 11 A. Retail targeted visit; that 12 we've identified a pharmacy that they 13 want to do additional investigation -- 14 Q. Okay. 15 A. -- which consisted of a 16 targeted visit. 17 Q. I want to direct your 18 attention to the bottom where it says, 2, 19 pre-visit preparation. 20 Are you there? 21 A. Yes, I am. 22 Q. It says, The CSRA 23 representative conducting the visit will 24 request, in writing, that the account</p>
<p style="text-align: right;">Page 451</p> <p>1 And then you had a 2 compliance staff at each of the 3 distribution centers. We have 26 4 distribution centers, all with a 5 compliance staff of either two to 6 six individuals. So -- also with 7 a role within -- looking into 8 these issues. 9 BY MR. PIFKO: 10 Q. Let's look at the last page 11 for completeness here. 12 Four people as investigators 13 there? 14 A. Yes. Four investigators 15 under Bruce. And then you see 16 investigators under diversion control. 17 - - - 18 (Whereupon, Amerisource 19 Bergen-Zimmerman Exhibit-17, 20 ABDCMDL 00251392-94, was marked 21 for identification.) 22 - - - 23 BY MR. PIFKO: 24 Q. I'm handing you what is</p>	<p style="text-align: right;">Page 453</p> <p>1 manager contact the owner/pharmacist in 2 charge, inform him/her of the visit and 3 ensure that the owner, person in charge, 4 or their designee, will be present on the 5 arranged date in order to give their 6 undivided attention to the CSRA 7 representative for a minimum of one hour. 8 The account manager is responsible for 9 coordinating the visit date and time with 10 the owner and/or person in charge or 11 their designee. 12 Do you see that? 13 A. Yes. 14 Q. So I just want to confirm, 15 under AmerisourceBergen's policy for 16 investigating and visiting pharmacies, 17 the owner or person in charge or designee 18 is provided advanced notice of those 19 visits, correct? 20 A. Yes. We need them there in 21 order to conduct our site visit. 22 - - - 23 (Whereupon, Amerisource 24 Bergen-Zimmerman Exhibit-18,</p>

<p style="text-align: right;">Page 454</p> <p>1 ABDCMDL 00002325-2334, was marked 2 for identification.) 3 - - - 4 BY MR. PIFKO: 5 Q. I'm handing you what is 6 marked as Exhibit-18. It's a memorandum 7 to distribution center associates, from 8 you and Frank Napoli, dated June 29, 9 2007, Bates numbered ABDCMDL 00002325 10 through 2334. 11 Take your time to review it. 12 I only have a couple little questions 13 about it. 14 MR. NICHOLAS: While he's 15 reviewing, can we know how much 16 time is left? 17 VIDEO TECHNICIAN: There is 18 42 minutes. 19 MR. NICHOLAS: Thank you. 20 Are you going to take the 21 full 42? 22 MR. PIFKO: We'll see. It's 23 actually earlier than I thought it 24 would be.</p>	<p style="text-align: right;">Page 456</p> <p>1 It's talking about different 2 codes that can be entered, if an order 3 exceeds a threshold, agree? 4 A. Code that -- yes. 5 Q. Under the code, AD approved 6 by DIV, allocate -- do you see that? 7 A. Yes. 8 Q. What does that mean? 9 A. Division would be the DIV. 10 Q. Do you know what allocate 11 means there? 12 A. In the system, at the time 13 when they placed an order -- when a 14 customer places an order, let's say 15 there's ten on the -- our inventory is 16 ten on the shelf and you place an order 17 for two, it will allocate those two. 18 So I'm assuming that if it's 19 approved by division, you would allocate 20 the amount of product that the customer 21 is ordering at the time. 22 Q. Scrolling down to the first 23 bullet point under there, it says, Know 24 your customer means -- let me back up.</p>
<p style="text-align: right;">Page 455</p> <p>1 MR. NICHOLAS: Me, too. 2 - - - 3 (Whereupon, a discussion off 4 the record occurred.) 5 - - - 6 THE WITNESS: Okay. 7 BY MR. PIFKO: 8 Q. Can you tell me what this 9 is? 10 A. This is a document that we 11 sent to the distribution centers, because 12 this is -- as we were building our new 13 program, as we were working with DEA 14 to -- building the new program, explain 15 the changes that were going to be made. 16 Q. So this is like a training 17 guidance document for distribution center 18 people on how we use the new computer 19 system and deal with suspicious order 20 requirements; is that correct? 21 A. With the changes that we 22 were making, yes. 23 Q. I want to direct your 24 attention to ABDCMDL 00002328.</p>	<p style="text-align: right;">Page 457</p> <p>1 If the -- it says, This code 2 should be used by the distribution center 3 associate during the initial review. If 4 the distribution center associate 5 determines that the order quantity is not 6 suspicious (based on "know your customer" 7 philosophy) the order can be released. 8 "Know your customer" means 9 knowing which accounts are hospitals, DOD 10 accounts, the warehouse, or a chain or 11 grocery customer, or another large 12 customer that has a known, legitimate and 13 well-established need for high volumes of 14 controlled drugs and listed chemicals. 15 Do you see that? 16 A. Yes. 17 Q. Okay. Is that an accurate 18 statement of what the "know your 19 customer" philosophy meant at that time? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: In this 23 instance, for the distribution 24 centers, it was for the</p>

<p style="text-align: right;">Page 458</p> <p>1 distribution centers, their 2 customer base. 3 So part of our negotiations 4 with DEA, in 2007, is they wanted 5 to make sure that the distribution 6 centers had an understanding of 7 the customers that they were 8 servicing as well. 9 And that was what the 10 training for the responsible 11 person in charge consisted of. 12 And that's what they're referring 13 to. 14 So DOD accounts, this is in 15 the height of the Iraq War, and we 16 didn't want to be not holding up 17 orders to the DOD at this time. 18 So if they came through at night 19 and it wasn't something -- you 20 know, it wasn't suspicious, then 21 they had the ability to release 22 that order. 23 BY MR. PIFKO: 24 Q. How about chain or grocery</p>	<p style="text-align: right;">Page 460</p> <p>1 - - - 2 BY MR. PIFKO: 3 Q. I'm handing you what has 4 been marked as Exhibit-19. It's a 5 document Bates labeled ABDCMDL 00002405 6 through 2418. 7 Take your time to review it, 8 but, again, I just have some questions 9 about specific areas in here. 10 Let me know when you're 11 ready. 12 A. Okay. 13 Q. Are you ready? 14 This document is titled, 15 Order Monitoring Program, OMP, Setting 16 the Record Straight. 17 Do you see that? 18 A. Yes. 19 Q. And it's talking about the 20 difference between the non-SAP, or S-A-P, 21 and the post-SAP system. 22 Can you explain what that is 23 about? 24 A. So we moved -- SAP is an</p>
<p style="text-align: right;">Page 459</p> <p>1 customers? 2 A. It was all depending upon 3 their knowledge of the customer that they 4 were servicing from the distribution 5 center day in and day out. 6 And these were all things we 7 were discussing with the DEA when we were 8 talking about holding -- because, again, 9 keep in mind, before 2007, orders were 10 reported after the fact. So DEA -- if 11 DOD or Cleveland Clinic placed an order 12 for medication that they needed the very 13 next day, they would get it; and if it 14 was suspicious, we would report it. 15 With this the new program, 16 now you could be impacting patient care 17 at a hospital, surgery center or DOD, in 18 the event that in the middle of the night 19 they had to release that order. 20 - - - 21 (Whereupon, Amerisource 22 Bergen-Zimmerman Exhibit-19, 23 ABDCMDL 00002405-2418, was marked 24 for identification.)</p>	<p style="text-align: right;">Page 461</p> <p>1 operating platform that a lot of 2 manufacturers operate on, and we moved to 3 that operating platform. 4 So this is a move from the 5 old operating platform for the company to 6 the new SAP operating platform. 7 Q. And prior to the SAP system, 8 the system you employed was called STAR? 9 A. I believe so. 10 Q. I want to direct your 11 attention to Page 5 of the document. 12 That's 2409. 13 Let me know when you're 14 there. 15 A. Yes. 16 Q. Frequently asked questions. 17 Do you see that? 18 A. Yes. 19 Q. These are questions that a 20 customer might ask? 21 A. No. These are to the 22 distribution centers. 23 Q. Okay. By the way, have you 24 seen this document before?</p>

Page 462

1 A. I have seen the document
2 before.
3 Q. Okay. It says, How are
4 thresholds tracked for multiple accounts
5 using the same DEA registration number?
6 Do you see that?
7 A. What number?
8 Q. Two.
9 A. Yes.
10 Q. So prior to the
11 implementation of this system, someone
12 with a single registration -- DEA
13 registration number could have multiple
14 accounts with AmerisourceBergen, correct?
15 A. So some pharmacies will set
16 up multiple accounts at a location to
17 have their front end on one account and
18 their pharmacy on another account. And,
19 so they could have more than one account
20 number.
21 But under the account
22 number, we would code the schedules as,
23 no, so they couldn't order controlled
24 substance. So we would roll it under the

Page 463

1 one account that was actually purchasing
2 the controlled substances.
3 Q. Well, it says here that
4 pre-SAP, under the STAR system, each
5 account had its own threshold. And after
6 the SAP system, thresholds are now based
7 on a single DEA registration number
8 rather than on the account number, agree?
9 A. They are based on the -- one
10 DEA number. And before, it was more of a
11 manual process, yes.
12 Q. What do you mean "before it
13 was more of a manual process"?
14 A. You had to go in and code
15 the other accounts as no, for controls.
16 Q. How would one do that?
17 A. They go in the -- so when
18 you put in a DEA number, in addition to
19 our system, they have to have a valid DEA
20 number and expiration date. And you have
21 to go in and click the schedules that
22 they're licensed to; there's II, IIN,
23 III, IIIN, IV and V. So you would go in
24 and, yes or no, and you would say no for

Page 464

1 all the controls.
2 Q. So why would it say each
3 account had their own threshold?
4 MR. NICHOLAS: Object to the
5 form.
6 THE WITNESS: I don't know.
7 BY MR. PIFKO:
8 Q. Were there thresholds for
9 things other than controlled substances?
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: I would only
13 be speculating.
14 BY MR. PIFKO:
15 Q. So it's possible that before
16 the SAP system, an account -- each
17 account within the same registration
18 number could have had controls?
19 A. Again, I don't know what
20 the -- so, as I indicated, the front end
21 in the pharmacy, the list of chemicals,
22 pseudoephedrine is a front-end item which
23 would require a DEA number but not a
24 control schedule.

Page 465

1 I'm not sure if that's what
2 they're referring to.
3 Q. But it's possible that at
4 that time, under the STAR system, an
5 account -- you could have one DEA
6 registration and order controls under two
7 accounts, correct?
8 MR. NICHOLAS: Object to the
9 form. Outside the scope.
10 THE WITNESS: That was
11 not -- that was not the procedure.
12 BY MR. PIFKO:
13 Q. But it's possible?
14 MR. NICHOLAS: Objection.
15 THE WITNESS: I can't say if
16 it occurred or not.
17 BY MR. PIFKO:
18 Q. Let's go to Page 6.
19 There's a heading that says,
20 What can a distribution center do to
21 release orders being held due to order
22 monitoring program?
23 Do you see that?
24 A. Yes.

<p style="text-align: right;">Page 466</p> <p>1 MR. NICHOLAS: I'm sorry, 2 can you just do that again? Which 3 one -- which number are we on? 4 BY MR. PIFKO: 5 Q. 11, Page 5. What can a 6 distribution center do to release orders 7 being held due to order monitoring 8 program, question mark. 9 Do you see that? 10 A. I'm sorry, now you confused 11 me. 12 MR. NICHOLAS: 11. 13 THE WITNESS: Number 11? 14 MR. NICHOLAS: Yes. 15 MR. PIFKO: You can look on 16 the screen in front of you as 17 well. 18 BY MR. PIFKO: 19 Q. I really want to direct your 20 attention to the next page, under that 21 same heading, under 11, it says, Bottom 22 line, historically each distribution 23 center had the ability to review held 24 orders and apply their best judgment in</p>	<p style="text-align: right;">Page 468</p> <p>1 and post-SAP, to review orders and 2 release if they believe they 3 weren't suspicious. 4 BY MR. PIFKO: 5 Q. That's not what it says 6 here. 7 It says that pre-SAP, once 8 an order -- once an account exceeded the 9 threshold on a drug family, the 10 distribution center had the ability to 11 release the order upon review. 12 It says, Under the post-SAP, 13 the distribution center has the ability 14 to review and release the order that 15 caused the account to exceed their 16 ordering threshold. However, any 17 additional order for that specific drug 18 family will automatically be rejected 19 upon submission. 20 Do you see that? 21 A. Is that in that same -- 22 Q. Same section, 11. 23 Do you agree that this 24 document says, As we deploy SAP to our</p>
<p style="text-align: right;">Page 467</p> <p>1 releasing individual orders. Most sales 2 associates have had accounts exceed their 3 thresholds at some point in time. 4 However, the distribution center had the 5 ability to, quote, make the call, end 6 quote, after conducting their review, 7 which led to customers receiving their 8 orders. As we deploy SAP to our 9 distribution centers, the order 10 monitoring program management process 11 becomes more systemic and less arbitrary. 12 Do you see that? 13 A. I see that. 14 Q. Do you agree that prior to 15 the SAP system, there was a degree of 16 arbitrariness in the distribution 17 center's ability to decide whether to 18 fill an order that was over a threshold? 19 MR. NICHOLAS: Object to the 20 form. Also object on grounds of 21 scope. 22 THE WITNESS: I don't -- I 23 believe they had the same -- they 24 had the same requirements pre-SAP</p>	<p style="text-align: right;">Page 469</p> <p>1 distribution centers, the order 2 monitoring program management process 3 becomes more systemic and less arbitrary? 4 Do you agree that's what it 5 says? 6 A. That's what it says, yeah. 7 Q. So do you agree there was 8 some degree of arbitrariness in the 9 pre-SAP system? 10 MR. NICHOLAS: Object to the 11 form. 12 THE WITNESS: Again, they 13 have the same -- so pre-SAP -- 14 again, pre-SAP, they could release 15 the order. Post-SAP, they still 16 could release the order if they 17 felt it wasn't suspicious. The 18 next order would get flagged 19 systematically. 20 BY MR. PIFKO: 21 Q. And in the old system, the 22 next order would not get flagged and they 23 could continue to, as this says, quote, 24 make the call?</p>

<p style="text-align: right;">Page 470</p> <p>1 A. It would get flagged and 2 they have to do a review. 3 Q. They could decide to release 4 it? 5 MR. NICHOLAS: Object to the 6 form. 7 THE WITNESS: If they -- 8 based upon the review and their 9 recommendation, they could do 10 that. 11 BY MR. PIFKO: 12 Q. So you would agree that 13 there was some degree of arbitrariness to 14 the old system? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: Again, it was 18 based upon their training and 19 review of whether they released 20 the order or not. 21 And, again, I wasn't aware 22 they couldn't do it after the SAP. 23 They have the ability to review an 24 order that hits the monitoring</p>	<p style="text-align: right;">Page 472</p> <p>1 that order or not. 2 Q. Do you believe the 3 distribution center people had sufficient 4 training? 5 A. Yes. 6 Q. Is there documentation of 7 the training they had? 8 A. Yes. 9 Q. Is it something other than 10 what we've seen today? 11 MR. NICHOLAS: Object to the 12 form. 13 THE WITNESS: I'm not sure. 14 In here? 15 BY MR. PIFKO: 16 Q. Yes. 17 A. No, I've not seen it. 18 Q. What was the name of the 19 training that they were provided? 20 A. I think it's responsible 21 person in charge training. 22 Q. Is that just a document they 23 read or is there a class? 24 A. No, you go through a -- and,</p>
<p style="text-align: right;">Page 471</p> <p>1 system. And if they have -- they 2 believe -- they determine that 3 it's not suspicious, they have the 4 ability to release the order. And 5 then the next day it's on a report 6 that's reviewed by a management 7 person. 8 BY MR. PIFKO: 9 Q. So it's your testimony that 10 there's -- nothing about the system was 11 arbitrary at all? 12 MR. NICHOLAS: Object to the 13 form of the question. 14 THE WITNESS: Arbitrary in 15 what way? 16 BY MR. PIFKO: 17 Q. About deciding whether to 18 fill an order after the threshold has 19 been exceeded. 20 A. It was up to them, based 21 upon their training and their knowledge 22 of the customer, the product, the amount, 23 the totality of the circumstances, to 24 make a decision whether they released</p>	<p style="text-align: right;">Page 473</p> <p>1 again, it depends on the time frame 2 you're talking about as well. So it's 3 continued to evolve over time. 4 In addition, we also do 5 annual training for compliance critical 6 employees at the distribution center, and 7 that's tracked as well. 8 Q. Let's go down on the same 9 page that we were just on, under Item 12. 10 It says, We cannot disclose 11 to our accounts that we are notifying the 12 DEA or the state. This is a suspicious 13 order monitoring program. Notifying a 14 customer that they have been reported to 15 the DEA or state would defeat the purpose 16 of the monitoring program. 17 Do you see that? 18 A. I see that. 19 Q. Do you agree with that 20 statement? 21 MR. NICHOLAS: Object to the 22 form. 23 But go ahead. 24 THE WITNESS: I don't agree</p>

<p style="text-align: right;">Page 474</p> <p>1 with that.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Why not?</p> <p>4 A. I don't think it defeats --</p> <p>5 I don't think it defeats the purpose of</p> <p>6 the monitoring program. The monitoring</p> <p>7 program is designed for us to monitor</p> <p>8 controlled substance orders and come up</p> <p>9 with a program to detect and report</p> <p>10 suspicious orders.</p> <p>11 Q. And so if a customer knows</p> <p>12 how the program functions, they could</p> <p>13 adjust their orders to evade detection</p> <p>14 under the program, agree?</p> <p>15 A. The purpose of the document</p> <p>16 is, so, again, and I think it was</p> <p>17 referenced in the DEA letters, that the</p> <p>18 vast majority of the distributors and the</p> <p>19 pharmacies are operating in compliance</p> <p>20 and are distributing much-needed</p> <p>21 medications to patients that come in the</p> <p>22 next day.</p> <p>23 We're on a just-in-time</p> <p>24 inventory. Customers place orders up</p>	<p style="text-align: right;">Page 476</p> <p>1 understands how the threshold program and</p> <p>2 your order monitoring program works, do</p> <p>3 you think that they can adjust their</p> <p>4 ordering practices to circumvent the</p> <p>5 program?</p> <p>6 MR. NICHOLAS: Object to the</p> <p>7 form. Object to the snarky</p> <p>8 comment at the beginning of the</p> <p>9 question. No need for it.</p> <p>10 THE WITNESS: When we</p> <p>11 implemented the program in 2007,</p> <p>12 this was a change in the industry.</p> <p>13 And customers -- it caused chaos</p> <p>14 in the marketplace, because</p> <p>15 customers were expecting these</p> <p>16 orders to come and they were not.</p> <p>17 And they weren't because</p> <p>18 they were diverting products, it</p> <p>19 was because of their ordering --</p> <p>20 however they had ordered the</p> <p>21 product, the system would flag it</p> <p>22 as a potentially suspicious order,</p> <p>23 order of interest.</p> <p>24 And after review, it wasn't</p>
<p style="text-align: right;">Page 475</p> <p>1 until 5 o'clock at night, and then they</p> <p>2 get it the next day. So pharmacies</p> <p>3 aren't carrying their inventory. They</p> <p>4 are expecting, when they place an order,</p> <p>5 that the patients are going to get their</p> <p>6 prescription the next day.</p> <p>7 So we try to ensure that we</p> <p>8 have a process in place that, one, meets</p> <p>9 our regulatory responsibility to prevent</p> <p>10 diversion through suspicious order</p> <p>11 reporting; but also to make sure that our</p> <p>12 customers have much-needed medications</p> <p>13 available to them for the prescriptions</p> <p>14 that they're filling by licensed doctors.</p> <p>15 And this is a program -- and</p> <p>16 that's why we have a person at the</p> <p>17 distribution center in the middle of the</p> <p>18 night reviewing these orders, that have</p> <p>19 been trained, so they're not holding up</p> <p>20 these orders so the next day the person</p> <p>21 isn't able to get their medication.</p> <p>22 Q. Are you ready to answer my</p> <p>23 question?</p> <p>24 I asked you, if a customer</p>	<p style="text-align: right;">Page 477</p> <p>1 suspicious. By that time, they've</p> <p>2 now delayed service to their</p> <p>3 patients for no fault of their</p> <p>4 own. And so when the order</p> <p>5 monitoring process was rolled out,</p> <p>6 pharmacies weren't trying to</p> <p>7 divert product or get around the</p> <p>8 system, they were just trying to</p> <p>9 understand how they can order</p> <p>10 product so they could get it to</p> <p>11 their patients.</p> <p>12 Your question -- I take your</p> <p>13 question, first, that we are --</p> <p>14 our customer base is trying to get</p> <p>15 around the system so they can buy</p> <p>16 much more opioids to divert, and</p> <p>17 that's not the case.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. You were providing an answer</p> <p>20 that was targeted towards this document.</p> <p>21 I'm just asking more</p> <p>22 generally, if you believe that if a</p> <p>23 customer has transparency into the</p> <p>24 threshold system and the order monitoring</p>

Page 478

1 program, that that can adversely impact
2 diversion because they could adjust their
3 activity to evade your system?
4 MR. NICHOLAS: Object to the
5 form. Asked and answered.
6 THE WITNESS: I don't agree
7 with that.
8 MR. PIFKO: We're going to
9 take a break.
10 VIDEO TECHNICIAN: Going off
11 the record. 6:02 p.m.
12 - - -
13 (Whereupon, a brief recess
14 was taken.)
15 - - -
16 VIDEO TECHNICIAN: Back on
17 the record at 6:11 p.m.
18 BY MR. PIFKO:
19 Q. If I wanted to ask you about
20 the company's records regarding specific
21 sales of controlled substances products
22 in the Track 1 jurisdictions -- are you
23 familiar with what the Track 1
24 jurisdictions are? If I use that term,

Page 479

1 does that mean anything to you?
2 A. Not exactly. I've seen it,
3 but I don't --
4 Q. Sorry. Let me ask it a
5 different way.
6 If I wanted to talk to
7 someone who was familiar with the
8 company's records of which products they
9 shipped to specific customers and amounts
10 and when, who would that be?
11 MR. NICHOLAS: I'll object
12 to the form.
13 THE WITNESS: I believe if
14 you're just looking for data, it
15 would be somebody in our IT
16 department.
17 BY MR. PIFKO:
18 Q. But to understand how the
19 system works?
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: The system --
23 the suspicious order monitoring
24 system or our operating system?

Page 480

1 BY MR. PIFKO:
2 Q. Well, okay. Based on your
3 production, and we were just looking at
4 the SAP and the STAR system, it's my
5 understanding that in the STAR system
6 time period, there's one document that
7 tells you what orders -- what orders were
8 placed and whether they were shipped.
9 There's another document that tells you
10 if there was an investigation, and
11 there's another document that tells you
12 if there was a report to the DEA.
13 Are you familiar with that
14 idea?
15 MR. NICHOLAS: Object to the
16 form.
17 THE WITNESS: I don't know
18 the specifics of the -- how it was
19 developed. I assume you're
20 talking about 2007 to --
21 BY MR. PIFKO:
22 Q. The STAR system from 2007 to
23 2012.
24 A. Right. I was involved --

Page 481

1 when I was negotiating the settlement
2 with DEA, our IT group was having
3 discussions with DEA as well. And I'm
4 not sure how they structured it.
5 I'm not sure what your
6 question is.
7 Q. Is there someone, though,
8 from the CSRA who would be familiar about
9 how the system works and what the data in
10 the different databases reflects?
11 MR. NICHOLAS: Object to the
12 form.
13 THE WITNESS: I am not sure
14 who that would be. It would be
15 somebody, I would think, in our IT
16 group.
17 BY MR. PIFKO:
18 Q. Is there a specific type of
19 title that that person would have?
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: I don't know
23 who would -- I don't know that
24 person.

<p style="text-align: right;">Page 482</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. What about for your</p> <p>3 investigations and due diligence files,</p> <p>4 who would be familiar with those?</p> <p>5 A. That would be, if they are</p> <p>6 CSRA files, that would be my department,</p> <p>7 or our department.</p> <p>8 Q. Who within your department</p> <p>9 would have the most expertise about that?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: What time</p> <p>13 frame?</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. Well, let's -- any time</p> <p>16 frame. Tell me.</p> <p>17 A. We've changed systems</p> <p>18 through the course. In addition to the</p> <p>19 SAP, we have also changed internal</p> <p>20 systems within CSRA.</p> <p>21 Q. Okay. How about for the --</p> <p>22 2007 to 2012?</p> <p>23 A. The investigation,</p> <p>24 investigations would probably be, you</p>	<p style="text-align: right;">Page 484</p> <p>1 deposition, did you understand yourself</p> <p>2 to be designated to testify about topics</p> <p>3 concerning the company's involvement with</p> <p>4 the had?</p> <p>5 A. Yes.</p> <p>6 Q. What steps did you take to</p> <p>7 become familiar with the company's</p> <p>8 involvement with the had?</p> <p>9 A. I had my personal</p> <p>10 involvement with the -- we talked about</p> <p>11 the committees I participated on. I</p> <p>12 reviewed the had document, I can't</p> <p>13 remember the title of it, the guidelines.</p> <p>14 And that's pretty much it.</p> <p>15 Q. Did you talk to anyone</p> <p>16 besides reviewing your own documents?</p> <p>17 A. Outside -- no. Outside of</p> <p>18 counsel, no.</p> <p>19 Q. Did you review any documents</p> <p>20 that weren't your own documents?</p> <p>21 A. I indicated the document of</p> <p>22 the had guidelines. That's not my</p> <p>23 document, but I reviewed that document.</p> <p>24 Q. There's many people at the</p>
<p style="text-align: right;">Page 483</p> <p>1 want a name?</p> <p>2 It would probably be Bruce</p> <p>3 Gundy. And Steve Mays, who you've</p> <p>4 mentioned. He has some system</p> <p>5 responsibilities -- not responsibilities,</p> <p>6 but knowledge within CSRA as well.</p> <p>7 Q. And then how about for the</p> <p>8 more recent period, 2012 to present, do</p> <p>9 you know?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form and to the scope, to some</p> <p>12 extent.</p> <p>13 THE WITNESS: If your</p> <p>14 question is who in CSRA would have</p> <p>15 that information up to the</p> <p>16 present, I assume, would be --</p> <p>17 David May would have information</p> <p>18 regarding that process.</p> <p>19 And then Bruce Gundy is also</p> <p>20 still in investigations. He would</p> <p>21 be that person for investigations.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. Okay. Thanks.</p> <p>24 In preparing for this</p>	<p style="text-align: right;">Page 485</p> <p>1 company who have participated with the</p> <p>2 had, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Who all, to your knowledge,</p> <p>5 has participated in the had?</p> <p>6 A. It's a lot.</p> <p>7 Q. Okay.</p> <p>8 A. It could be 50. Because</p> <p>9 they have different segments, whether</p> <p>10 it's tax, whether it's procurement,</p> <p>11 whether it's government affairs.</p> <p>12 Q. How about with respect to</p> <p>13 diversion issues?</p> <p>14 A. It would be Steve Mays,</p> <p>15 David May.</p> <p>16 Q. Steve Mays, has he been</p> <p>17 involved in the had? What is the time</p> <p>18 period?</p> <p>19 A. He's been involved with the</p> <p>20 regulatory affairs committee for years</p> <p>21 prior to 2007.</p> <p>22 Q. Prior to 2007?</p> <p>23 A. Yes. I believe so.</p> <p>24 Q. Does he still have</p>

<p style="text-align: right;">Page 486</p> <p>1 involvement with the had?</p> <p>2 A. Yes.</p> <p>3 Q. I understand that there's a</p> <p>4 gap in your document production from</p> <p>5 August 24th, 2007 to July 15th, 2010.</p> <p>6 Do you have any reason to</p> <p>7 believe that there would be documents not</p> <p>8 in your system from then from you?</p> <p>9 A. No.</p> <p>10 Q. Were you still working for</p> <p>11 the company during that time period?</p> <p>12 A. Yes.</p> <p>13 Q. Did you have a computer and</p> <p>14 e-mail during that time period?</p> <p>15 A. I did.</p> <p>16 Q. Are you aware of any system</p> <p>17 crashes during that time period?</p> <p>18 MR. NICHOLAS: Let me</p> <p>19 interpose an objection to the</p> <p>20 extent that I personally don't</p> <p>21 know if the representation you're</p> <p>22 making is right about the</p> <p>23 documents.</p> <p>24 But go ahead and ask your</p>	<p style="text-align: right;">Page 488</p> <p>1 like, ten seconds to decide</p> <p>2 whether to ask him any questions.</p> <p>3 MR. PIFKO: Sure.</p> <p>4 VIDEO TECHNICIAN: Going off</p> <p>5 the record. 6:19 p.m.</p> <p>6 - - -</p> <p>7 (Whereupon, a brief recess</p> <p>8 was taken.)</p> <p>9 - - -</p> <p>10 VIDEO TECHNICIAN: Back on</p> <p>11 record at 6:22 p.m.</p> <p>12 MR. NICHOLAS: I have no</p> <p>13 questions for the witness. So,</p> <p>14 Mr. Zimmerman, thank you very much</p> <p>15 and you're excused. Although you</p> <p>16 can sit here to listen to us argue</p> <p>17 about one last thing.</p> <p>18 Just you said -- you said,</p> <p>19 you know, five minutes ago that</p> <p>20 there was a gap in the documents.</p> <p>21 It's the first I've heard of that.</p> <p>22 You haven't raised that with us up</p> <p>23 until now.</p> <p>24 I suspect there's not a gap</p>
<p style="text-align: right;">Page 487</p> <p>1 questions.</p> <p>2 THE WITNESS: What was the</p> <p>3 last question? Sorry.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. I was just asking if you</p> <p>6 were aware of any system failures or</p> <p>7 crashes of servers during that time</p> <p>8 period at the company?</p> <p>9 A. Not that I know of.</p> <p>10 MR. PIFKO: Okay. Well,</p> <p>11 it's my understanding that there's</p> <p>12 that gap in those documents and</p> <p>13 there may be other documents that</p> <p>14 might come into the production.</p> <p>15 So subject to additional</p> <p>16 documents that might be produced,</p> <p>17 we will reserve our right to</p> <p>18 recall. And I'm sure we can meet</p> <p>19 and confer about it if we have a</p> <p>20 dispute.</p> <p>21 And other than that, I don't</p> <p>22 have any questions for you at the</p> <p>23 moment.</p> <p>24 MR. NICHOLAS: Give me,</p>	<p style="text-align: right;">Page 489</p> <p>1 in the documents. But in any</p> <p>2 event, this is all my way of</p> <p>3 saying we don't necessarily agree</p> <p>4 that you're going to be able to</p> <p>5 come back, you know, for another</p> <p>6 deposition. That's something</p> <p>7 we'll have to fight about.</p> <p>8 MR. PIFKO: I agree. That</p> <p>9 was my statement, that we can meet</p> <p>10 and confer about it.</p> <p>11 So we can dispute about</p> <p>12 whether that happens or not.</p> <p>13 MR. NICHOLAS: Okay. I've</p> <p>14 got nothing else.</p> <p>15 VIDEO TECHNICIAN: This ends</p> <p>16 today's deposition. We're going</p> <p>17 off the record at 6:23 p.m.</p> <p>18 - - -</p> <p>19 (Whereupon, the deposition</p> <p>20 was concluded at 6:23 p.m.)</p> <p>21 - - -</p> <p>22</p> <p>23</p> <p>24</p>

Page 490

CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

Amanda Maslynsky-Miller
Certified Realtime Reporter
Dated: August 6, 2018

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

Page 491

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

Page 492

- - - - -
E R R A T A
- - - - -

PAGE LINE CHANGE

REASON: _____

REASON: _____

REASON: _____

REASON: _____

REASON: _____

REASON: _____

REASON: _____

REASON: _____

REASON: _____

REASON: _____

REASON: _____

Page 493

ACKNOWLEDGMENT OF DEPONENT

I, _____, do hereby certify that I have read the foregoing pages, 1 - 489, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

CHRISTOPHER ZIMMERMAN DATE

Subscribed and sworn to before me this _____ day of _____, 20____.

My commission expires: _____

Notary Public

1	LAWYER'S NOTES		
2	PAGE LINE		
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____